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85-123

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

BETTY O. MUKA, Appellant

v.

FRANK A. CARTER, JR.
CHIEF DISCIPLINARY COUNSEL

APPEAL FROM THE RHODE ISLAND SUPREME COURT

JURISDICTIONAL STATEMENT

[redacted]

Betty O. Muka
Appellant
113 Kay Street
Ithaca, N. Y. 14850
(607) 257-2016

1401P

15.1(e) QUESTIONS PRESENTED

1. Under the Constitution of the State of Rhode Island is the jurisdiction of the Rhode Island Supreme Court limited to final revisory and appellate jurisdiction upon all questions of law and equity, and such other jurisdiction as is prescribed by law? (answer sought: yes)

2. Under the Constitution of the State of Rhode Island is the Rhode Island Supreme Court specifically granted original jurisdiction over disciplinary proceedings against lawyers? (answer sought: no)

3. Has the Rhode Island Legislature enacted any statute which is still in effect which grants original jurisdiction to the Rhode Island Supreme Court over disciplinary proceedings against lawyers? (answer sought: no)

4. When the Rhode Island Supreme Court

presided over the original disciplinary hearings against Rhode Island attorney Betty O. Muka did it lack original jurisdiction to do so under the Rhode Island Constitution and laws? (answer sought: yes)

5. Are all of the actions of the Rhode Island Supreme Court taken with respect to the disciplinary proceedings against Betty O. Muka void ab initio for lack of original subject matter jurisdiction? (answer sought: yes)

6. Under the Constitution and laws of the State of Rhode Island is any Rhode Island court granted original jurisdiction over disciplinary proceedings against lawyers? (answer sought: no)

7. Under the Constitution of the State of Rhode Island does the Rhode Island Supreme Court have the power to grant to it-

self original jurisdiction over disciplinary proceedings against lawyers, or over any other subject matter? (answer sought: no)

8. Under the Rhode Island Constitution is Rhode Island Supreme Court Rule 42-1 "disciplinary jurisdiction" of the Rhode Island Supreme Court limited to appellate jurisdiction? (answer sought: yes)

9. On its face does Rhode Island Supreme Court Rule 42-6(d) show that the "disciplinary jurisdiction" of the Rhode Island Supreme Court is only appellate in nature and not original in nature? (answer sought: yes)

10. When the Rhode Island Supreme Court presided over the original disciplinary hearings against Rhode Island attorney Betty O. Muka did it act unconstitutionally under the Rhode Island Constitution?

(answer sought: yes)

11. By mentioning "disciplinary jurisdiction" of the Rhode Island Supreme Court, but not clearly stating that it was only appellate jurisdiction and not original jurisdiction, is Rhode Island Supreme Court Rule 42-1 unconstitutional under the Rhode Island Constitution to the extent that it infers that original jurisdiction also exists in the Rhode Island Supreme Court, and is Rule 42-1 unconstitutional under the United States Constitution, 14th Amendment, and void for vagueness because its language is subject to arbitrary and different interpretations and abuse? (answer sought: yes, yes)

12. Can a court constitutionally and/or legally exercise judicial powers over a proceeding in which it lacks constitutional and statutory subject matter jurisdiction? (answer sought: no)

13. When a court acts without subject matter jurisdiction, are all of its acts void ab initio? (answer sought: yes)

14. Is Supreme Court Rule 42 and all of its sub-parts 42-1 through 42-22 unconstitutional and illegal under the Rhode Island Constitution and laws by reason there is no Rhode Island court with original subject matter jurisdiction in which disciplinary proceedings against lawyers can be commenced? (answer sought: yes)

15. Under Rhode Island Constitution, Article III requiring distribution of powers, is Rhode Island Supreme Court Rule 42 and all of its sub-parts unconstitutional by reason that through such the Rhode Island Supreme Court purports to grant to itself all executive (42-4, 42-5, 42-6), legislative (42-4(c)(4)) and judicial (42-1, 42-6(d)) powers simultaneously in regard to disciplinary proceedings against law-

yers? (answer sought: yes)

16. Under the constitutional due process guarantees of the United States Constitution, 14th Amendment, is Rhode Island Supreme Court Rule 42 and all of its subparts unconstitutional for purporting to concentrate all executive, legislative and judicial power in the Rhode Island Supreme Court with regard to disciplinary proceedings against lawyers? (answer sought: yes)

17. Since the Rhode Island Supreme Court appoints the Disciplinary Counsel (42-5 (a)) and the members of the Disciplinary Board and designates their Chairman and Vice-Chairman (42-4(a)), can direct the Disciplinary Board to consider and cause to be investigated the conduct of any attorney, which is the Disciplinary Board's duty to do when directed (42-4(c)(1)), can bring to the attention of the Disci-

plinary Counsel matters involving alleged misconduct of an attorney, which it is Disciplinary Counsel's duty to investigate (42-5(b)(1)), and the members of the Disciplinary Board and Disciplinary Counsel and his staff are all immune from suit for any misconduct in the course of their official duties (42-7), and the pleadings and proceedings are all "confidential" and secret (42-21), but any Rhode Island Supreme Court order imposing some disciplinary sanction is not confidential (42-21), the entire procedural set-up makes possible the arbitrary abuse of it by the Rhode Island Supreme Court and the Disciplinary Board and Disciplinary Counsel and his staff, all under the Rhode Island Supreme Court's direct control, and fails to provide any impartial or independent determiner of probable cause or factfinder, and thus the Rhode Island Supreme Court Rule 42 and all of

its subparts are unconstitutional by reason they violate the Constitutional due process standards guaranteed by the 14th Amendment to the United States Constitution, which amendment also prohibits the states from depriving any person of any property (right) without such Constitutional due process of law. Is that statement true? (answer sought: yes)

18. Does Rhode Island Supreme Court Rule 42 and all of its sub-parts additionally violate the Constitutional due process guarantees of the 14th Amendment to the United States Constitution by reason it deprives the respondent attorney of the unilateral right to subpoenas to compel witnesses in his behalf by imposing an unnecessary procedure capable of arbitrary abuse and delay (42-11), it deprives the respondent attorney of unilateral rights to engage in pre-hearing discovery

(42-11), it deprives the respondent of a public trial (42-21), it deprives the respondent of a trial by jury (42-6(a), (b) and (d)), and review that it mentions does not provide for the respondent to be heard at it (42-6(d)? (answer sought: yes)

19. Does the Rhode Island Supreme Court Rule 42 and all of its sub-parts violate the United States Constitution, Amendment 14, in regard to guarantees of the equal protection of the law and prohibitions against states from denying any person within its jurisdiction of the equal protection of the laws, by reason it subjects the clearly defined discrete and suspect class of attorneys licensed to practice law in Rhode Island to discrimination without any reasonable relation to any substantial state interest in doing so, in that the attorneys are deprived (42-11) of unilateral discovery rights which all other liti-

gants in the State of Rhode Island have without leave of court (e.g. Rhode Island Rules of Civil Practice (RCP) Rules 26-37& 45), and the attorneys are deprived (42-11) of unilateral rights to subpoenas for compelling witnesses in their behalf which all other litigants in Rhode Island have (e.g. RCP 45(a)-(f)), and the attorneys are deprived (42-6(a), (b) and (f)) of a trial by jury guaranteed to every other litigant in the State of Rhode Island (Rhode Island Constitution, Art. I, Sec. 15, and RCP 38, 39, etc.), and the attorneys are deprived (42-6) of the right to a speedy and public trial, by an impartial jury, and to not be deprived of his liberty and property (rights) unless by the judgment of his peers, or the law of the land, which all other persons charged with wrongful acts in the State of Rhode Island are constitutionally guaranteed (e.g. Rhode Island Constitution, Article I, Sec-

tion 10 in criminal proceedings and Section 15 in civil proceedings) and are guaranteed by court rule (e.g. Rules of Criminal Procedure, Rule 23(a), for criminal prosecutions, and Rules of Civil Procedure, Rules 38 and 39 for civil proceedings), and such Rhode Island Supreme Court Rule 42 and all of its subparts cannot pass the "rational relation" or "strict scrutiny" tests for constitutionality? (answer sought: yes)

20. Is the Rhode Island Supreme Court Rule 42 and all its subparts unconstitutional under the Rhode Island Constitution, Article I, Section 2 because it has not been made for the good of the whole people, as it deprives the people of the services of licensed attorneys by way of a totally arbitrary and unconstitutional process, either directly or indirectly by way of the "chilling effect" upon the way

licensed attorneys provide their professional services to the people and/or practice law under fear of such disciplinary action? (answer sought: yes)

21. Is the Rhode Island Supreme Court Rule 42 and all its subparts unconstitutional under the Rhode Island Constitution, Article I, Section 5 by reason that the disciplinary procedures do not require that any procedures or actions taken conform to the laws of Rhode Island, and also by reason that the disciplinary procedures do not provide the respondent attorney with any recourse to the laws of the State of Rhode Island, and also by reason that the disciplinary procedures do not provide procedures for obtaining right and justice, freely and without purchase, completely and without denial; promptly and without dely, conformably to the laws? (answer sought: yes)

13. Is Rhode Island Supreme Court Rule 42 and all its subparts unconstitutional under both the United States Constitution, Amendment 14 guarantees of due process of law and equal protection of the law, and Rhode Island Constitution, Article I, Section 5 rights to justice, by reason Rule 42 does not require the existance of any complainant or person wronged, does not require any person with legal standing or a direct interest in the outcome to initiate the proceedings, does not require that any evidence of any fact upon which to base the proceedings exist, does not require any determination of probable cause to be made before or during the proceedings, does not require that any person with personal knowledge of the facts give any evidence of such, does not require that any rules of evidence be applied, does not require that any evidence be admitted, does not set forth any guide-

lines for the admission or exclusion of evidence or require that evidence be relevant, material or necessary, does not specify that any person has any burden of production of evidence or any burden of persuasion or specify any degree of any such burden for any party, does not state that the respondent attorney is presumed to be innocent of wrongdoing until any wrongdoing whatsoever is evidenced or proved (also contrary to Rhode Island Constitution, Article I. Section 14, and U. S. Constitution, Amendments 5 and 6 by interpretation and through Amendment 14), does not protect respondent's right to not testify against himself (also contrary to Rhode Island Constitution, Article I, Section 13, and U.S. Constitution, 5th Amendment), does not require any decision to be supported by any fact or any law, much less by any substantial kind or amount of evidence, either originally or upon

any review by any Rhode Island Court, does not require that the petition against the respondent attorney be verified by a person with knowledge of the facts stated therein or supported by any affidavit of a person with knowledge of the facts stated in the petition, does not require that the allegations in the petition state facts constituting professional misconduct, does not require that the allegations in the petition be proved to be true or even evidenced, does not require that the decision be based upon either the allegations of the petition or any evidence whatsoever, does not authorize counterpetitions or counterclaims, does not authorize defenses in law or fact, does not require responses to counterpetitions or counterclaims, does not authorize motion practice or provide for any hearings or decisions related to objections in law before, during or after

the hearings or at any time before disposition or afterward, and is 100% arbitrary, capricious, unconstitutional, illegal and abusive in design? (answer sought: yes)

14. Is Rhode Island Supreme Court Rule 42 and all of its subparts unconstitutional under the United States Constitution, Amendment 14 guarantees to due process of law and equal protection of the law, and Rhode Island Constitution, Article I, Section 5, by reason that there is no clerk that holds any file or record of the disciplinary proceedings against any lawyer, and the respondent lawyer cannot see any file of his case, and the prosecutor (Disciplinary Counsel) and the Supreme Court judges engage in ex parte contacts related to both the procedure and the merits, which contacts are sometimes recorded and sometimes not recorded, and put into the prosecutor's file only, and are never available to the

respondent attorney to see or copy or even know about in any way, and many such proceedings take place without notice or any opportunity to defend or object thereto and without the prosecutor or the court having to support the actions sought and taken with any allegation of fact or law in support thereof, and without the decision being required to be based upon any fact or any law or any rule, and without any procedure by which the respondent attorney can find out what happened or why or who did what or to review the actions taken or to be heard in any way or given any consideration whatsoever in regard to them? (answer sought: yes)

15. When a person becomes licensed to practice law, does that person lose the state and federal constitutonal, statutory, common law and/or civil rights that such person had while unlicensed? (an-

swer sought: no)

16. Is a state, including the State of Rhode Island, prohibited by the 14th Amendment to the United States Constitution from requiring a person to give up or to waive any of his constitutional, statutory, common law and/or civil rights as a condition to being licensed to practice law in that state? (answer sought: yes)

17. Under the Supremacy Clause (Article VI, Sec. 2) of the United States Constitution, which makes the United States Constitution and laws (and treaties) the "supreme law of the land", and under the privileges and immunities clause and the due process clause and the equal protection clause of the 14th Amendment to the United States Constitution, and under federal statutes (e.g. Title 42 U.S.C. 1981 guarantees of equal rights to sue, be parties, give evidence, and to the full

and equal benefit of all laws and proceedings for the security of persons and property, and to be subject to the same punishment, penalties, licenses and exactions of every kind, and to no other, as all other persons within the jurisdiction of the United States, do such federal constitutional and statutory provisions preempt any and all state constitutions, state statutes, state rules, state procedures, and state case law and/or common law which are inconsistent with such federal guarantees? (answer sought: yes)

18. Under Article VI, Sec. 3, of the United States Constitution, are all executive and judicial officers, both of the United States (including members of the United States Supreme Court) and of the State of Rhode Island (including members of the Rhode Island Supreme Court) bound by oath or affirmation to support the United States Constitution, including

the aforementioned guarantees and provisions, by declaring Rhode Island Supreme Court Rule 42 and all of its sub-parts to be unconstitutional for inconsistency with the United States Constitution, and by nullifying and voiding ab initio and reversing all proceedings and actions taken by the Rhode Island Supreme Court in regard to the disciplinary proceedings against the respondent attorney therein, Betty O. Muka, and declaring that as a matter of fact the present status is that Rhode Island Constitution and laws fail to give original jurisdiction over disciplinary proceedings against lawyers to any Rhode Island court. (answer sought: yes)

19. Disciplinary Rule 8-102(A) and (B) of the Rhode Island Code of Professional Responsibility is unconstitutional under the First Amendment to the United States

Constitution by reason it constitutes a prior restraint upon the freedom of speech and has a "chilling effect" upon the exercise of that right by attorneys, and furthermore because Rhode Island Supreme Court Rule 42 and all of its subsections under which the State of Rhode Island purports to enforce the Code of Professional Responsibility denies the clearly defined and suspect minority class of Rhode Island licensed attorneys of all of the federal and Rhode Island state constitutional and statutory and common law and civil rights guarantees to due process of law and equal protection of the law (see preceeding questions) which all other citizens who are not licensed attorneys have (and licensed attorneys also have) in ordinary civil actions in the Rhode Island state courts and in the Rhode Island federal courts wherein there must be an actual complainant who has suffered actual damages and

who has standing to sue the attorney for libel, slander, defamation, etc., and who must actually state a claim cognizable at law upon which relief can be granted, and who must also prove such claim with admissible evidence, at a trial where the laws of evidence are controlling and the burden of production of evidence and the burden of persuasion are that of the plaintiff and not that of the defendant, and where the evidence must be sufficient at law to prove a prima facie case, and where there is a constitutional right to a jury trial and to an impartial factfinder, and where an impartial factfinder weighs the evidence and determines if a specific standard of proof has been met both for the claims and also for any defenses which the defendant has a right to raise and prove and have considered and which right is equal to that of the plaintiff's right, and where the verdict, decision and/or judgment must

be supported by substantial admissible evidence and in conformance with the relevant and controlling law, and where the plaintiffs and defendants have an equal and unilateral and unimpaired right to full discovery before trial and to subpoenas to compell witnesses in their behalf, and where there is an equal statutory right to appellate review on issues of errors of fact, errors of law, and constitutional questions, and where the parties have a right to make opening and closing statements and to have the factfinder instructed properly in the relevant and controlling law and directed to faithfully follow such law - none of which elements are any part of the disciplinary proceedings against attorneys in the State of Rhode Island under its Supreme Court Rule 42, et seq. Is that statement true? (answer sought: yes)

20. Was Rhode Island Supreme Court Rule 42 and all of its subparts unconstitutionally applied to respondent attorney, Betty O. Muka, in relation to the disciplinary proceedings against her? (answer sought: yes)

21. Was Rhode Island Disciplinary Rule 8-102(B) unconstitutionally applied to respondent attorney, Betty O. Muka, in relation to the disciplinary proceedings against her? (answer sought: yes)

22. Was Rhode Island Disciplinary Rule 7-106, entitled "Trial Conduct", subsection (C) unconstitutionally, unlawfully and/or erroneously applied to respondent attorney, Betty O. Muka's, post-trial filing of her motion & affidavit upon personal knowledge in support of her timely motion for a new trial in behalf of her client, and her post-trial filing of her affirmed "Objections and Statement of Facts Con-

cerning Judge Thomas H. Needham (and others)" which was incorporated by reference and attachment to such affidavit filed, as required, with the clerk of the Rhode Island Superior Court pursuant to its Rules of Civil Procedure, Rules 59(a), (b), and (c) and 5(e), etc.? (answer sought: yes)

23. Was Rhode Island Disciplinary Rule 7-102(A)(1), (2) and (6) unconstitutionally, unlawfully and/or erroneously applied to respondent attorney, Betty O. Muka's timely filing of such motion papers for a new trial, especially after the duly noticed motion for a new trial was heard and neither the presiding judge nor the opposing counsel (both accused of misconduct in court and out of court which materially altered the course of the trial and prejudiced the rights of the plaintiff and deprived him of a fair trial on his

medical malpractice claims) disputed any statement made in the motion papers for a new trial, and such statements were uncontested and undisputed on the record of that civil case, and those uncontested issues made res judicata thereby and thus unreviewable in any other court of law except by appeal (which opposing counsel never did take), and unreviewable by way of disciplinary proceedings initiated by a person without standing to raise the issue in any court and without personal knowledge of the facts stated in his petition which was knowingly falsely verified after no investigation whatsoever of the facts to which he swore, and thereby committed felonious perjury? (answer sought: yes)

24. Since plaintiff's attorney in the medical malpractice case, i.e. respondent attorney Betty O. Muka, had already timely

filed plaintiff's Notice of Appeal and ordered the trial transcript and the Rhode Island Supreme Court had issued an order that the case be fully briefed for the appeal instead of disposed of summarilly, only the Rhode Island Supreme Court in connection with the hearing of such appeal had jurisdiction to consider the issues raised by plaintiff-appellant on that appeal, none of which involved any issue of fact on the motion for a new trial and which facts appeared uncontested on the record and required the Rhode Island Supreme Court to accept them as established, instead of to conduct new hearings under the guise of disciplinary proceedings to create issues of fact that were never raised in the malpractice case below, and to suspend plaintiff-appellant's attorney from the practice of law before the appeal brief was filed and to thus obstruct the appeal of the

medical malpractice case not only by removing plaintiff-appellant's attorney, but by deliberately prejudicing all members of the Rhode Island Supreme Court by conducting their own original investigation so as to make them incapable of judging the appeal on the record below as opposed to the additional record created by the court itself under depraved and unconstitutional procedures and actions of their own, thus the Rhode Island Supreme Court wrongfully exercised <u>original</u> jurisdiction over the disciplinary proceedings against respondent attorney Betty O. Muka, and in doing so it obstructed the appeal of the medical malpractice case in which the Rhode Island Supreme Court did have only appellate jurisdiction, which was an unconstitutional and unlawful perversion of the law and of the powers of the Rhode Island Supreme Court. Is that statement true? (answer sought: yes)

25. Since Rhode Island Disciplinary Rule 6-101(A)(3) prevents an attorney from neglecting a legal matter entrusted to him, and since the Rules of Civil Procedure, Rule 59 authorizes a motion for a new trial within 10 days after the entry of judgment, and since Rhode Island General Laws Section 8-2-16 gives jurisdiction to the Superior Court (where the medical malpractice trial occurred) over motions for new trials as may be provided by law, and since the acts of the trial judge and opposing attorney and insurance company defending the defendant and hired attorney for the ex parte contact with the trial judge which caused the trial judge to remove from the stand the testifying expert urologist required to prove the violations of the standards of care by defendant urologist, after which the trial judge granted a motion for a directed verdict against plaintiff for a failure to

produce the very expert testimony that he had obstructed - all constituted grounds upon which a new trial could be based, was it a violation of respondent attorney's (plaintiff-appellant's attorney in the medical malpractice case and appeal) constitutional, statutory, common law and/or civil rights and/or an abuse of discretion for the Rhode Island Supreme Court to subject respondent attorney, Betty O. Muka, to disciplinary proceedings for filing the precise motion papers for a new trial necessary to carry out her professional duties to her client under the applicable and controlling law? (answer sought: yes)

26. Since Rhode Island Disciplinary Rules 1-103(A) and (B) require a licensed attorney to report professional misconduct of other attorneys and judicial misconduct to the court or other authorities empowered to investigate or act upon such

violations, and since the acts of the other attorneys in the medical malpractice case constituted violations of specific Disciplinary Rules of the Rhode Island Code of Professional Responsibility, and since the acts of the trial judge constituted violations of specific Rhode Island Cannons of Judicial Ethics, and since the respondent attorney (plaintiff's attorney in the medical malpractice case) stated under oath in her affidavit and objections and statement of facts, upon personal knowledge, what the acts were that they all did, and what specific Disciplinary Rule and Cannon each act violated, which deprived the medical malpractice plaintiff of a fair trial and were grounds for a new trial, in the motion papers for a new trial, and filed such papers with the Superior Court Clerk as required for the motion to be heard for a new trial, which was also notifica-

tion required to be given to the court pursuant to DR 1-103(A) and (B), and also filed a formal complaint supported by such affirmed "Objections and Statement of Facts Concerning Judge Thomas H. Needham (and others)" with the Rhode Island "Commission on Judicial Tenure and Discipline" which is purportedly authorized by the Rhode Island Supreme Court under "Rules of the Commission on Judicial Tenure and Discipline" to receive complaints, conduct hearings, and recommend the disposition of such to the Rhode Island Supreme Court, and which filing fulfilled respondent attorney, Betty O. Muka's, duties under DR 1-103(B) to report such judicial misconduct, and the filing of the motion papers for a new trial also placed upon the trial court record evidence of such professional and judicial misconduct which occurred both in court and outside of court (which would not otherwise appear on the record) so that

such matters would be a part of the record before the Rhode Island Supreme Court for review in case the motion for a new trial was unsuccessful, thereby evidencing grounds for reversal of the trial court by the Rhode Island Supreme Court, which it was plintiff's attorney in the medical malpractice case (respondent attorney, Betty O. Muka in the disciplinary proceedings based upon such new trial motion papers) duty to do in order to preserve his rights on such issues for appeal, was it a violation of respondent attorney's constitutional, statutory, civil and/or common law rights, and/or an abuse of discretion to subject plaintiff-appellant's attorney in the medical malpractice case (Betty O. Muka) to disciplinary proceedings for doing those very specific and necessary acts? (answer sought: yes)

27. In the Order dated April 19, 1985

by the Rhode Island Supreme Court after the conclusion of the disciplinary hearings presided over by 4 of the 5 Rhode Island Supreme Court judges (all except Chief Judge Joseph A. Bevilacqua who recused himself without stating any reasons but who was at that time threatened with disciplinary action and is currently suspended for judicial misconduct based upon associations with organized crime figures), did the Rhode Island Supreme Court deliberately and intentionally and with actual malice publish the false statement that respondent attorney "accused Justice Needham of ... accepting a 'pay-off' of $125,000" when no such statement appeared in any of the motion papers for a new trial, which were the sole basis of the disciplinary proceedings against respondent attorney, Betty O. Muka, and by way of such Order did the Rhode Island Supreme Court deliberately paint respondent-

attorney Muka in a false light and damage her reputation by releasing such false order to the Providence Journal for publication throughout Rhode Island and neighboring states and the nation, in retaliation for respondent attorney, Betty O. Muka, performing her professional duties to her client and to the judiciary by reporting the acts of the trial justice and several attorneys connected with the case, using very carefully worded statements which the Rhode Island Supreme Court misquoted and misinterpreted despite the fact that the order was disproved by documentary evidence before the Court? (answer sought: yes)

28. Does such Order of April 19, 1985 show on p. 2 thereof that the Rhode Island Supreme Court presided over the disciplinary hearings of respondent-attorney, Betty O. Muka, because she

had filed disciplinary complaints against virtually all members of the disciplinary board, thus violating its own Rhode Island Supreme Court Rule 42-6(b) which requires that former members of the Disciplinary Board are authorized to sit instead? (answer sought: yes)

29. The order dated April 19, 1985 states that the court undertook the task of acting as a fact-finding body as well as the duty of ultimate determination in respect to the imposition of disciplinary sanctions "under the rule of necessity." Can any court fabricated and named rule create jurisdiction that the court does not have? (answer sought: no)

30. Was it "necessary" that the Rhode Island Supreme Court exercise <u>original</u> jurisdiction over a disciplinary proceeding based directly and precisely upon issues coming before it under their

legitimate appellate jurisdiction and which issues were res judicata in any other proceeding except the appellate one? (answer sought: no)

31. After claiming in its Order dated April 19, 1985 that the Rhode Island Supreme Court "undertook the task of acting as a fact-finding body", did the Rhode Island Supreme Court show by the very same order that it made absolutely no findings of fact, did not consider any allegations made in Disciplinary Counsel's petitions against respondent-attorney, and did not show that any of them were proved by Disciplinary Counsel? (answer sought: yes)

32. By stating in its Order dated April 19, 1985 that "During the hearings before this court, Mrs. Muka consistently manifested a lack of any appreciation for her obligations as a member of the bar to sup-

port the truth" did the Rhode Island Supreme Court manifest its unconstitutional and reversible error of holding respondent attorney responsible for the burden of proof when the burden of proof of the disciplinary petition was upon Disciplinary Counsel? (answer sought: yes)

33. Did the Order dated April 19, 1985 completely fail to state the nature of the allegations in the disciplinary petitions against respondent attorney, Betty O. Muka, any facts alleged there, any proof of any such facts, or even any reference to any disciplinary rules purportedly violated? (answer sought: yes)

34. Did the Order dated April 19, 1985, showing 10 all-day hearings before the Rhode Island Supreme Court, discuss even one item of evidence presented by any of the parties? (answer sought: no)

35. Was the Order dated April 19, 1985 completely devoid of any citation or quotation of any authority in law by way of any constitution or statute or common law or case law? (answer sought: yes)

36. Was the Order dated April 19, 1985 completely devoid of any finding of fact or conclusion of law? (answer sought: yes)

37. When the Order dated April 19, 1985 stated "For the reasons stated, Mrs. Betty O. Muka is hereby suspended from the practice of law, and a complete opinion will follow setting forth in greater detail the reasons for this action and any further disciplinary action to be taken in our final decision" did the Rhode Island Supreme Court deprive respondent-attorney Betty O. Muka of due process of law and deprive her of her valuable property right in her license to practice law before

making the findings of fact and conclusions of law upon which every judicial decision must be based before making the decision and before taking any action thereon? (answer sought: yes)

38. Since Rhode Island Supreme Court Rule 42-6(b) requires the Disciplinary Board to submit findings and recommendations within sixty (60) days after the conclusion of disciplinary hearings before it and the submission of briefs, if any, has the Rhode Island Supreme Court violated its own rule by repeatedly refusing throughout every hearing session to allow respondent attorney to respond to questions of law raised by the justices themselves as excuses to prevent tesifying witnesses from answering questions put to them on point, by repeatedly telling respondent-attorney that she would be allowed to argue the law at the end of the hearings,

after the evidence was closed and it was too late to recall the witnesses whose answers were needed, and at the end of the evidence refusing to accept the brief of respondent-attorney which she requested permission to file with the court, then in the Order of April 19, 1985 claimed that respondent-attorney "displayed not even the rudimentary knowledge of basic substantive and procedural law relating to the malpractice case in issue (when it wasn't in issue during the disciplinary proceedings and the Court stopped respondent-attorney many times with the admonition that such facts and law were not the subject of the disciplinary proceedings and could not be stated there) or relating to the disciplinary procedure before this court (when the Court was violating all of the parts of Rhode Island Supreme Court Rule 42 and all of its subparts, and respondent-attorney was con-

stantly objecting on the record that the procedural rules were being violated and that the laws of evidence were being violated and that the Court was making up the rules as it went along, etc.), and by failing to produce within almost 90 days of the April 19, 1985 suspension order taking immediate action against respondent-attorney, Betty O. Muka, any findings of fact or conclusions of law whatsoever? (answer sought: yes)

39. Do the conclusory "lack of evidence" type remarks in the Order dated April 19, 1985 have any relationship to any Disciplinary Rule in the entire Rhode Island Code of Professional Responsibility for which discipline can be imposed? (answer sought: no)

40. When the United States Supreme Court reviews the entire file of the disciplinary proceedings both before, during and

after the Rhode Island Supreme Court hearings, including the trial transcripts and documentary and physical evidence at trial, will it find that every statement made by respondent-attorney, Betty O. Muka, in her motion papers for a new trial was evidenced during the hearings, and most of it was also admitted under oath by the persons who did the acts of judicial and professional misconduct she complained about which deprived her client of a fair trial? (answer sought: yes)

41. When the United States Supreme Court reviews such entire file, will it find that the Rhode Island Supreme Court members are a part of the organized crime complained about by respondent-attorney, Betty O. Muka, and that each member of the Rhode Island Supreme Court committed overt acts in support of organized crime on the record? (answer sought: yes)

42. Contrary to the Order dated April 19, 1985, the Muka motion papers for a new trial did not accuse Judge Needham or Judge Rodgers or Atty. Dolan of conspiring to suborn perjury, nor Justice Needham of accepting a "pay-off" of $125,000, and not having ever alleged such, it is no wonder that there was no attempt to prove any such statements to be true, but that could not possibly have any relation to any professional misconduct by respondent-attorney Muka; only judicial misconduct by the Rhode Island Supreme Court in publishing a false version of the Muka papers in its Order of suspension. Is that true? (answer sought: yes)

43. Contrary to the Order dated April 19, 1985, the Muka motion papers for a new trial did not accuse Judge Needham of "being a member of organized crime", and no failure to prove that unstated

statement could possibly reflect upon Mrs. Muka's license to practice law. Is that true? (answer sought: yes)

44. Is the Order dated April 19, 1985 against the weight of the evidence? (answer sought: yes)

45. Should the United States Supreme Court consider facts not of record in the proceedings below but which influenced the outcome of the disciplinary hearings, including that Atty. Muka had filed a formal complaint against Chief Judge Bevilacqua's son, John, and against Disciplinary Counsel and Disciplinary Board members for not prosecuting John and others, and the Chief Judge directed Disciplinary Counsel to prosecute Atty. Muka immediately thereafter, and the Supreme Court judges quashed Atty. Muka's subpoena deuces tecum to produce such records showing organized crime's influence? (answer sought: yes)

15.1(b) LIST OF PARTIES

Frank A. Carter, Jr., Chief Disciplinary counsel, was the only named party, but during the hearings his role was performed by Kathleen Managhan who had been appointed by the Rhode Island Supreme Court to do so, and during the hearings the 4 Rhode Island Supreme Court judges presiding (Thomas F. Kelleher, Joseph R. Weisberger, Florence Kerins Murray, and Donald F. Shea) essentially became parties on the side of Disciplinary Counsel and also became witnesses by way of their accusations and testimony from the bench. Rhode Island Supreme Court Justice Joseph A. Bevilacqua was a silent party on the side of Disciplinary Counsel, in that he conspired with Mr. Carter to have the proceedings initiated and heard by the Rhode Island Supreme Court, but recused himself during the first day of the hearings.

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15.1(d) REPORTS OF OPINIONS BELOW

The entire proceedings were confidential and secret, despite respondent-attorney's request that they be public. The Order is reported at 491 A.2d 334. There were never any opinions in the entire case, only orders (see 15.1(j)(i) and (ii)).

15.1(e) JURISDICTIONAL GROUNDS

15.1(e)(i) Nature of the Proceeding

The nature of the proceeding below was never determined, although placed in question. Without constitutional or statutory authority to do so, the Rhode Island Supreme Court (minus the Chief Justice who recused himself) held original secret somewhat trial-type hearings which were devoid of almost all characteristics of a trial, over respondent-attorney's objections to its lack of original subject matter jurisdiction to preside over the matters and lack of personal jurisdic-

tion over her, and other defenses in law, all of which were pleaded and none of which were allowed to be stated or supported during the hearings in which the Rhode Island Supreme Court directed respondent attorney to not orally state any arguments on point of law and to not file any brief on any point of law, repeatedly rejecting her attempts to do such. The proceedings were purportedly disciplinary in nature, against Betty O. Muka, an attorney licensed to practice law in the State of Rhode Island. They resulted in an order indefinately suspending her from the practice of law in Rhode Island, a penalty unauthorized by any law in Rhode Island, when there had not been any findings of fact or conclusions of law or any opinion created before such final order. During the hearings Rhode Island Supreme Court Justice Joseph R. Weisberger stated that the proceedings were a "civil trial."

But the respondent-attorney had never been served with any civil process. The Court obstructed all of respondent-attorney's attempts to place the relevant and controlling law into evidence during her own testimony under oath about reading such law from official publications of the law and trying to offer such official publications as full exhibits to be placed into evidence. This was in defense of charges that respondent-attorney had "no basis in law" for her purported misconduct of timely filing her motion for a new trial in behalf of her client following a jury trial in a medical malpractice case.

15.1(e)(ii) Dates of Entry

The Order of Suspension for an indefinate length of time was filed April 19, 1985. (Not served until April 29, 1985.)

15.1(e)(iii) Statute

At least two statutory provisions confer jurisdiction on the United States Supreme

Court to review the original and final order of the Rhode Island Supreme Court suspending respondent-attorney, Betty O. Muka, indefinately from the practice of law. An appeal is authorized by Section 1257(2) of Title 28 of the United States Code, because respondent-attorney, Betty O. Muka, in her pleadings drew into question the validity of Rhode Island Supreme Court Rule 42 and its subparts and other rules that the Rhode Island Supreme Court made as it went along, which Rhode Island Supreme Court Rules, when properly approved in advance, and when effective, supercede statutory regulations in conflict therewith, pursuant to Rhode Island General Laws, Title 8, Chapter 6, Section 2. Disciplinary rules 8-102(B) and 7-106(C)(4) of the Rhode Island Code of Professional Responsibility were challenged as an unconstitutional prior restraint on protected speech in violation of the First Amend-

ment to the United States Constitution, and Rhode Island Supreme Court Rule 42 and its subparts (42-1 through 42-22) were challenged as unconstitutional in violation of the 14th Amendment to the United States Constitution both in the pleadings and during the proceedings in which the rules being made up as the Court went along were also challenged. The Order of indefinite suspension was in favor of the validity of the challenged rules, indirectly, by taking action purportedly based on their validity, without any supporting opinion. A writ of certiorari is also authorized by Section 1257(3) of Title 28 of the United States Code, because in the pleadings and papers prior to the hearings and during the hearings themselves the validity of the Rhode Island Supreme Court Rule 42 and its subparts, and the rules being made up as they went along, and disciplinary rules were

drawn into question on the grounds that they were repugnant to the Constitution and laws of the United States, particularly the First and 14th Amendments to the United States Constitution, and respondent-attorney specially claimed the privileges of a United States citizen.

15.1(f) Citations to Provisions

(See Appendix for provisions verbatum) Rhode Island Const., Art. I and Amendment XII, Rhode Island Supreme Court Rule 42 (including 42-1, 42-2, 42-3(a), (b) and (c), 42-4(a), (c)(1), (2) and (4), 42-5(a), (b)(1), (2), (3) and (6), 42-6 (a), (b), (c), (d), and (e), 42-7, 42-11, and 42-21), Rhode Island General Laws 8-6-2, United States Constitution, Article VI and Amendments XIV and I, Rhode Island Disciplinary Rules 1-102(A) and (B), 7-102(A)(1), (2) and (6), 7-106(C), and 8-102(B). (Etc. See Appendix Table of Contents)

15.1(g) STATEMENT OF THE CASE

Betty C. Muka, an attorney licensed to practice law in the State of Rhode Island, was trial attorney for the plaintiff in the case of Raymond Sousa v. Rosalind Chaset in her capacity as the Executrix of the Estate of the late Nathan D. Chaset, M.D. tried to a jury in the Rhode Island Superior Court as P.C. No. 78-1969 on January 31, February 1, 2, 6, 7, 8 and 9. Superior Court Justice Thomas H. Needham presided over the jury trial and at the close of the plaintiff's case granted the defendant's motion for a directed verdict. The following day Atty. Muka filed a formal complaint against Judge Needham with the Rhode Island Commission on Judicial Tenure and Discipline, supported by an affirmed document entitled "Objections and Statement of Facts Concerning Judge Thomas H. Needham (and others)" which subsequently became identified as "Ex. A."

Ex. A stated facts about events that happened both in court and out of court which constituted direct violations of the Cannons of Judicial Ethics by Judge Needham and violations of specific disciplinary rules of the Code of Professional Responsibility by several attorneys, including opposing counsel (Atty. David W. Carroll) who advised plaintiff's expert urologist (Dr. John B. Lawlor) that he didn't need to testify when he came to court to do just that, and advised Dr. Lawlor to state that he didn't want to testify when he took the stand, and when Judge Needham stopped the trial to give Dr. Lawlor an opportunity to retain counsel that he had not sought before taking the stand, Atty. Carroll conspired with an officer of defendant's insurer (William Egan, claims adjuster for the Medical Malpractice Joint Underwriters Association of Rhode Island, who was at the trial observing it) to sud-

denly retain one of the insurer's regular attorneys (John F. Dolan) as Dr. Lawlor's attorney, after which Atty. Dolan went in secret to Judge Needham's chambers and obtained Judge Needham's agreement to take Dr. Lawlor off the stand, without any notice to plaintiff's attorney who was in the courtroom and without giving Atty. Muka any opportunity to oppose such action. Judge Needham dismissed Dr. Lawlor first, and then gave Atty. Muka an opportunity to comment, after it was too late. The motion for a directed verdict was substantially based upon Judge Needham finding a failure of plaintiff to put into evidence the expert opinion of an urologist, i.e. the aborted testimony of Dr. Lawlor. Dr. Lawlor had prior to trial given the expert opinions needed to Atty. Muka, had earlier been appointed by court order to be the expert urologist in the case, and was additionally sub-

poenaed to testify, and in court showed such court order and subpoena after he was dismissed by Judge Needham but before he left the stand, but Judge Needham refused to allow him to testify. In addition to filing Ex. A with the formal complaint to the Commission, which was her duty to do under DR 103(A) and (B), Atty. Muka filed a copy of Ex. A in the Superior Court Clerk's Office to be placed in the file of the Sousa v. Chaset case, just before filing the formal complaint, and, within the 10-day limit after judgment filed a Motion for a New Trial supported with Atty. Muka's own affidavit upon personal knowledge, which incorporated Ex. A into it by reference, which told of more facts and violations of judicial and professional ethics which deprived her client of a fair trial and were lawful and proper grounds for a new trial. At the hearing of the motion for a New Trial there were

no opposing affidavits or memorandums of law, but Judge Needham (who had been served by Atty. Muka with a copy of her formal complaint and Ex. A against him) denied the motion for a purported lack of jurisdiction (despite R.I.G.L. 8-2-16 jurisdiction over motions for a new trial and R.C.P. 59 which authorized it), and stated from the bench that he was going to give a copy of such motion papers to the Rhode Island Disciplinary Counsel without comment. Disciplinary Counsel, Frank A. Carter, Jr., without any personal knowledge of the facts and without conducting any investigation, filed two petitions against Atty. Muka which Mr. Carter verified, which claimed that there was "no basis in fact or law" for the statements made in her notice of motion for a new trial and supporting affidavit and Ex. A incorporated into it and also attached to it, and stated that Atty. Muka had violated DR 7-106(C) entitled "trial conduct" by <u>filing</u>

such motion papers for a new trial, after the trial was over, and that Atty. Muka had violated DR 8-102(B) by making accusations against a judge, which Mr. Carter imagined were false. Atty. Muka responded to informal and then formal charges against her, and when she heard a rumor that the Rhode Island Supreme Court was going to hear the hearings instead of the Disciplinary Board authorized by Supreme Court Rule 42-6, Atty. Muka included challenges to their original jurisdiction, etc. Chief Judge Joseph A Bevilacqua who had secretly agreed with Mr. Carter to prosecute Atty. Muka before any complaints at all had been filed, (and who was subsequently and still is suspended for his contacts with organized crime figures), recused himself, and the other 4 Rhode Island Supreme Court judges presided over the hearings. During the entire proceedings before and during the hearings, Atty.

Muka's constitutional, statutory, common law, and civil rights, and even her rights under Rhode Island Supreme Court rule 42 et seq were grossly violated: pre-trial discovery was prohibited, subpoenas were all obstructed in advance, a few allowed were quashed without motion, the Court directed Atty. Muka to not serve others, no opening statements were allowed, the 10 days of hearings (2 per month) were marked by hundreds of interruptions from the bench, including testimony from the bench that was unsworn and often false, no rules of evidence were followed, Atty. Muka was prevented from countering arguments of law proposed erroneously from the bench to obstruct answers of witnesses being cross-examined by her, was told that she could argue the law at the end of the hearings, was denied her request to submit a brief on the law at the end of the hearings, and was ordered suspended in-

definately from the practice of law without any findings of fact or conclusions of law or opinion, in an order which made no reference to any law or any disciplinary rule or any violation thereof. At the hearings the judge and attorneys whose conduct had been challenged by Atty. Muka were produced by the Disciplinary Counsel and they admitted under oath most of the statements Atty. Muka had made in her motion papers for a new trial, and furthermore many of them admitted that what they had done was wrong. The Order of suspension claimed that Atty. Muka had made certain statements that Atty. Muka never did make, and said that Atty. Muka had failed in her duty to support the truth and that Atty. Muka was ignorant of the law and procedures, when they never allowed Atty. Muka to state her view of the law and she objected to the violation of the procedural rules and her constitutional rights, and

she herself gave sworn testimony supporting 100% of her statements made in her challenged motion papers, most of which was corroborated by many witnesses.

15.1(h) REASON FOR FULL BRIEFS

The questions presented are so substantial as to require plenary consideration with full briefs on the merits and oral argument for their resolution by reason of the following: 1. This is a case of first impression. Never before has an attorney who promptly filed appropriate papers in the interest of their client been subjected to disciplinary proceedings for the content of the papers, a first Amendment right and an absolute privilege for an attorney. 2. If attorneys can be subjected to disciplinary proceedings based upon the content of their appropriately filed papers, then the profession is subject to coercion and the interests of the public can never be

served. 3. When the highest court of a state grossly and flagrantly violates all of its own rules, all of the commonly accepted rules of Constitutional due process and equal protection of the law, and itself engages in a totally unauthorized original proceeding which is not subject to review by any court in the state, then the United States Supreme Court is the only court of review possible, and because it takes only about 4% of matters submitted to it, there is a great probability of making such practices nationwide in their scope because of what the highest court in Rhode Island has done and has reported publicly. 4. What the Rhode Island Supreme Court has done will sweep the nation like wildfire if it is not immediately nipped in the bud. 5. The integrity of the entire legal profession, as well as the judiciary itself, is in grave danger, should the entire matter not be thoroughly considered

and adjudicated in detail and reversed. 6. When the highest court of a state issues such a drastic order as indefinite suspension from the practice of law, and makes no reference to any law or any violation of any disciplinary rule, and states that it will act first and then think of reasons why later, and doesn't ever issue any opinion in the entire matter, it is imperative that the only appellate court that exists embark upon a thorough review of the legal aspects of the matter which the highest court of the State of Rhode Island has proceeded to ignore while it takes final action. 7. This is especially so because the Chief Justice of the Rhode Island Supreme Court has just agreed to a 4-month suspension from his judicial duties because of his contacts with organized crime, and he is the one who directed the prosecution of Atty. Muka when there was no complaint against her and she per-

formed her professional duties of reporting the judicial misconduct and professional misconduct that she personally observed to the proper authorities, as well as moved to protect the interests of her client.

15.1(i)(none)

15.1(j) APPENDIX IS SEPARATELY BOUND

28 U.S.C. 2403(b) may be applicable. The Rhode Island Attorney General is being served.

Respectfully submitted,

Mrs. Betty O. Muka

Mrs. Betty O. Muka
Appellant
113 May St.
Ithaca, N. Y. 14850
(607) 257-2016

15.1(j) APPENDIX

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15.1(j) APPENDIX

15.1(j)(i) Final order of 4/19/85

0652c

Supreme Court

No. DB-247

No. DB-248

85-188 M.P.

Frank A. Carter, Jr.,
Chief Disciplinary Counsel :

v. :

Betty O. Muka :

ORDER

This matter is before us pursuant to two disciplinary petitions brought by Frank A. Carter, Jr., Chief Disciplinary Counsel (Carter). These petitions are based upon documents filed by Betty O. Muka in support of a motion for new trial in respect to a medical malpractice case heard in the Superior Court entitled Raymond Sousa v. Rosalind Chaset, in her capacity as the Executrix of the late Nathan D. Chaset, M.D., C.A. No. 78-1969.

In the documents filed in support of this motion for new trial, the respondent, Betty O. Muka, accused the trial justice, Thomas H. Needham, Justice Joseph F. Rodgers, Jr., and Attorneys David W. Carroll, Joseph A. Kelly, and John F. Dolan of conspiring to suborn perjury and to obstruct justice in order to deprive her client of a fair trial. She further accused Justice Needham of being a member of organized crime and of accepting a "pay-off" of $125,000 in order to terminate the malpractice case favorably to the defendant. She also accused in these documents Dr. John B. Lawlor of deliberately giving perjured testimony.

Because the respondent had filed complaints against virtually all members of the disciplinary board which would ordinarilly have been the original hearing tribunal in this matter, the members of that board recused themselves from par-

ticipating in an evidentiary hearing of the subject petitions. Therefore, this court undertook the task of acting as a fact-finding body as well as the duty of ultimate determination in respect to the imposition of disciplinary sanctions. This function has been performed by this court under the rule of necessity.

This court began hearing evidence in this matter on November 15, 1984, and continued hearings on November 30, December 10, and December 17, 1984. The hearings continued January 18, January 28, February 18, February 25, April 15 and April 16, 1985. In the course of the evidentiary hearings, not one shred of evidence has been produced to support any of these extravagant accusations on the part of Betty O. Muka. Consequently, the court is constrained to find as a fact that her accusations could not have been based on any information sufficient to form a rea-

sonable or sincere belief that such accusations were made either with actual knowledge of their falsity or with reckless disregard of whether they were false or not. She has deliberately and grievously maligned members of the Superior Court and members of the bar of hitherto outstanding and unblemished reputation.

Her own tape-recorded evidence of a conversation with Dr. Lawlor, an outstanding member of the medical profession, completely belies her characterization of his testimony in court as perjured. She recorded a conversation with Dr. Lawlor and another conversation with Mr. William E. Egan, an adjuster for Joint Underwriting Association of Rhode Island, without indicating to either of them that the telephone conversations were being recorded. However both conversations were admitted into evidence on her motion without objection. These recordings complete-

ly belie her accusations concerning misconduct on the part of Dr. Lawlor or Mr. Egan.

During the hearings before this court, Mrs. Muka consistently manifested a lack of any appreciation for her obligations as a member of the bar to support the truth; she consistently mischaracterized testimony and flagrantly reasserted her unsupported accusations against members of the judiciary and the bar. She displayed not even the most rudimentary knowledge of basic substantive and procedural law relating to the malpractice case in issue or relating to the disciplinary procedure before this court.

As a consequence, we are of the opinion that Mrs. Muka has violated the disciplinary rules set forth in the petitions before this court and that she is not qualified to practice law in this state, and that it would be a disservice to the pub-

lic to allow her to continue to practice law as a member of the Rhode Island Bar.

For the reasons stated, Mrs. Betty O. Muka is hereby suspended from the practice of law, and a complete opinion will follow setting forth in greater detail the reasons for this action and any further disciplinary action to be taken in our final decision.

The respondent is directed to furnish to the clerk of this court within ten days of the date of this order the names and addresses of all clients presently represented by her in order that arrangements may be made to protect the interests of respondent's clients.

Chief Justice Bevilacqua did not participate.

Entered as an Order of this Court on this 19th day of April, 1985.

By Order, (signature)
Walter J. Kane, Clerk

15.1(j)(ii) Preceeding Orders

(First Order dated June 21, 1984)

Supreme Court

DB 247

DB 248

Frank A Carter, Jr. :
Chief Disciplinary Counsel :
:
v. :
:
Betty O. Muka :

ORDER

These matters presently pending before the Disciplinary Board are removed from the Disciplinary Board to this Court for hearing.

Entered as an order of this Court this 21st day of June, 1984.

BY ORDER

(signature of Beverly A Clark)

Walter J. Kane, Clerk

(letter dated October 26, 1984)

October 26, 1984

Mrs. Betty O. Muka, Esq.

113 Kay Street

Ithaca, New York 14850

In Re: Frank A. Carter, Jr. v. Betty O. Muka, File No. 84-037 and File No. 84-042

Dear Mrs. Muka:

This will confirm our telephone conversation of the above date. As I indicated to you, the Clerk of the Court and myself have reviewed the provisions of Supreme Court Rule 42-11 in connection with your request for 30 blank subpoenas in the above matter, and we concluded that the rule does not permit the issuance of subpoenas in blank. The rule, and the practice here, require that you seek a subpoena for a named individual, and that upon such request, the clerk would issue the subpoena.

Obviously, you disagree with this inter-

pretation of the rule, and therefore, I indicated to you that I would submit your request for subpoenas to the court for its consideration.

Very truly yours,

(signature of Ronald A. Tutalo)

Ronald A. Tutalo

RAT/t Administrative Assistant

****

(Second order dated November 1, 1984) (Note: Respondent-attorney was never served with this order, and no copy of it can be found in the clerk's files. Only the following reference to it appears in the clerk's docket: "11/1/84 Order entered. Respondent's request for blank subpoena denied, instructed to file under rule 42-11.")

(Third Order dated November 1, 1984)

Supreme Court

No. D B. 247

No. D.B 258

Frank A. Carter, Jr. :
Chief Disciplinary Counsel :
:
v. :
:
Betty O. Muka, Respondent :

ORDER

In response to the Motion for Relief filed by respondent, the following order may enter:

(1) This court has undertaken and will perform the task of hearing evidence in the above-entitled case, solely by reason of the fact that the respondent has challenged substantially the entire membership of the Disciplinary Board Therefore, it is impossible for this court to create an entirely new board for the purpose of hearing this one case. It is, of course, within the jurisdiction of this court to pass

upon matters relating to the discipline of members of the bar. This duty may be addressed either initially or by way of review of the proceedings of a body established for the purpose of disciplining or admitting members of the bar. See, e.g., Petition of Shields, 192 A.2d 430 (1963); Creditors' Service Corp. v. Cummings, 57 R.I. 291, 190 A.2 (1937); Rhode Island Bar Association v. Automobile Service Association, 55 R.I. 122, 179 A. 139, 100 A.L.R. 226 (1935); see also In Re Petition of DeOrsey, 112 R.I. 536, 312 A.2d 720 (1973).

(2) Except for the special provision that this court will hear the testimony in this case, all other rules relating to disciplinary proceedings will be applicable. The absence of a right of review within the State of Rhode Island in no wise deprives the respondent of due process, since she will be heard before the

highest tribunal in the state and the sole tribunal which has been empowered by the Constitution of the State of Rhode Island with the judicial power of the state, and said power inherently includes the admission and disciplining of members of the bar. We do note that the respondent, if aggrieved by a decision of the Supreme Court of Rhode Island, may petition for certiorari to the Supreme Court of the United States in respect to any federally protected right which she may perceive.

(3) The respondent's request that Frank A. Carter, Jr., Chief Disciplinary Counsel, be disqualified from acting in this matter is denied. Mr. Carter, although he is the complainant in the case, will not conduct the presentation of evidence. The hearing will be conducted by special counsel, Kathleen Managhan, Esquire.

(4) The respondent's request for the issuance of thirty subpoenaes in blank but

signed by the clerk is hereby granted. However, the issuance of the subpoenas over the signature of the clerk does not in any constitute a determination by this court or by the clerk as to the relevancy or competence of any testimony or documents which may be sought by virtue of said subpoenaes.

(5) In respect to the taking of depositions, the provisions of Disciplinary Rule 42-11 will be controlling. This rule in pertinent part reads as follows:

> "Testimony may be taken by deposition or such other method as may be authorized by the (court) if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved."

Disciplinary Rule 42-11 does not provide for discovery proceedings either on behalf of the complainant or the respondent. It must be noted that disciplinary proceedings against an attorney are con-

fidential and therefore the taking of depositions must be strictly circumscribed.

(6) The hearing which will commence on November 14, 1984, will be limited to those matters germane to the complaint against respondent as set forth in D.B. 247 and D.B. 248. The respondent's request to consolidate this case with other cases in respect to which she may have filed complaints is denied.

Entered as an Order of this Court this 5th day of November, 1984.

By Order,

(signature of Walter J. Kane)

Walter J. Kane, Clerk

****

(Fourth Order dated November 27, 1984)

Supreme Court

No. DB 247

No. DB 248

Frank A. Carter, Jr. :
Chief Disciplinary Counsel :

v. :
:
Betty O. Muka :

ORDER

After consideration of the respondent's Motion for Assistance, it is hereby ordered that

1. a copy of the deposition taken of Joseph A. Kelly by Assistant Disciplinary Counsel be furnished to the respondent; and

2. a copy of the transcript of the disciplinary proceedings before this court be furnished to the respondent after the stenographer has filed the transcript with the clerk of this court and the clerk's staff has had a reasonable opportunity to make the requisite copy.

Entered as an Order of this Court this 27th day of November, 1984.

By Order,

(signature of Brian B. Burns)

Walter J Kane, Clerk

ENTER:

(signature of Thomas F. Kelleher)

Thomas F Kelleher

Associate Justice

November 27, 1984

****

(Fifth order dated January 10, 1985)

Supreme Court

No. D.B. 84-037

No. D.B. 84-042

Frank A. Carter, Jr., :
Chief Disciplinary Counsel :
:
v. :
:
Betty O. Muka :

ORDER

The motion of Frank A. Carter, Jr., Chief Disciplinary Counsel and the petitioner in the above-entitled disciplinary actions, to quash a subpoena duces tecum dated December 4, 1984, which was served upon him at the instance of the respondent, Betty O. Muka, is granted.

By Order

(signature of Beverly A. Clark)

Walter J. Kane, Clerk

15.1(j)(ii) Companion case order

(Bench decision dated November 14, 1984 in Betty O. Muka v. The Supreme Court of the State of Rhode Island, et al in case commenced November 13, 1984 in the U.S. District Court for the District of Rhode Island, where all three judges in the district recused themselves and transferred the case to the U.S. District Court for the District of New Hampshire, thus changing the case number from C.A. No. 84-0622 in Rhode Island to C. 84-728-D (later changed from D to L) in New Hampshire where Chief Judge Shane Devine conducted an all-day evidentiary hearing on plaintiff's Order to Show Cause why an injunction should not issue restraining the Rhode Island Supreme Court from conducting the hearings set for November 14.)

It is now approximately 4:00 p.m. on the 14th of November. I'm about to issue from the bench my opinion in this case. There will be no other written Orders, so counsel better make careful notes.

This matter has come before the Court for a hearing on this date, November 14, 1984, on those portions of the Plaintiff's 53-page, 186-paragraph complaint which seek to enjoin certain proceedings scheduled originally to have commenced today in the Supreme Court of Rhode Island. The instant complaint was filed in the United States District Court in Providence, Rhode Island on November 13, and transferred here to permit this Court to sit by designation. The Court has this date heard the oral argument of the Plaintiff appearing pro se, as well as live testimony from Plaintiff and Frank Carter, Chief Disciplinary Counsel, appointed by the Rhode Island Supreme Court. Mr. Carter is also

named as one of many defendants in the Plaintiff's complaint.

Plaintiff Betty Muka has been admitted to the practice of law in the state of Rhode Island since June of 1983. In simplified terms, she complains in this Court that attempts by Rhode Island authorities to discipline her for certain actions allegedly performed by her in the course of such legal practice comprise deprivations of certain rights which she possesses under the Constitution of the United States. As is the case in many states, the Rhode Island Supreme Court has detailed in the subsections of its Rule 42 the procedures to be followed in the event of unprofessional acts or omissions on the part of members of its bar. Generally speaking, a Court-appointed Disciplinary Board is charged with the powers and duties to investigate the conduct of an attorney on its own motion or upon complaint in writing filed

with Chief Counsel, appointed by the Supreme Court of Rhode Island.

Upon completion of investigation by such counsel, he in turn makes recommendations to the Board as to disposition either by dismissal or further proceedings and the Board then reviews his recommendations and decides what further action is to be taken. If desired, a Respondent-Attorney may himself or herself request a formal hearing before the Board. Ordinarily when such a request is made, or a petition is filed, seeking to impose discipline, the Board schedules a hearing at which the Respondent may be represented by counsel and has the right to cross-examine and present witnesses.

Within 60 days of such hearing on a petition, the Board is required to report to the Supreme Court of Rhode Island setting forth its findings and recommendations and transferring to the Court the record of

the proceedings before it. In turn, the Rhode Island Supreme Court reviews the record and then issues its Orders.

As is clear from the proceedings before this Court, however, this Plaintiff had herself filed complaints against every member of the Disciplinary Board of the State of Rhode Island, so that the unique circumstances which were presented to the Supreme Court of Rhode Island required that Court to reach a decision as to how best to approach the complaints filed with respect to Plaintiff's conduct.

The evidence before this Court is that at least since February of 1978, when Defendant Carter became Chief Counsel to the Disciplinary Board, no other member of the Rhode Island bar has filed complaints against every member of the Disciplinary Board, although complaints have been filed against individual members thereof. Faced with this dilemma, the Rhode Island Supreme

Court accordingly decided that it would hold the evidentiary-hearing and appointed Special Counsel to conduct same. An Order to that effect was issued under date of November 5, 1984, setting commencement of the proceedings before the Supreme Court of Rhode Island for 11:00 a.m. on this date, November 14.

To prevail on a claim of injunctive relief, which is the issue before this Court, in the First Circuit, a Plaintiff must satisfy a Court that the Court can find first that the Plaintiff will suffer irreparable injury if the injunction is not granted; second, that such injury outweighs any harm which granting injunctive relief would inflict on the Defendant; third, that the Plaintiff has exhibited a likelihood of success on the merits; and fourth, that the public interest will not be adversely affected by the granting of the injunction. See Planned Parenthood

v. Bellotti, 642 F.2d. 1006-1009, First Circuit (1981).

As Plaintiff herein, Mrs. Muka, suggests that she is deprived of due process and equal protection by virtue of the fact that the Constitution of the State of Rhode Island does not contain specific language affording to the Supreme Court of Rhode Island the power to exert disciplinary powers over its members. But the law is clear in the First Circuit that Federal Courts must render a substantial deference to a State's legitimate interest in regulation of the bar so as to assure the competence and moral character of its members. See Piper v. Supreme Court of New Hampshire, 723 F.2d 98 at 103, 104. In the Piper case on page 102 we find the following language, which is here quoted without citation: The relationship between control over State bar membership and the State's ability to function as a sovereign political body is very

close. The bar is a vital component of the State Judiciary which, together with the Executive and Legislative branches, constitutes an essential ingredient of State government. Although not State employees, lawyers have long been considered officers of the Court. This designation does not refer to the fact that lawyers are officials capable of exercising judicial powers, but rather to the fact that lawyers are closely associated with, and have very important responsibilities to, a State Court. In our adversary system, competent and dedicated lawyers are essential in order for a State's judicial system - undoubtedly one of the essential attributes of state sovereignty - to function properly. Thus, the Supreme Court has said that a state's interest in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice. According-

ly, state bar regulations have usually been granted substantial deference by the Federal Courts. To the same effect is the decision in Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, (1982).

There is little question that even without specific language in the State Constitution, its highest Court of record possesses inherent powers to discipline the members of its bar and indeed by implication, at least, the Rhode Island Legislature, in Chapter 27, Section 11-2718 has indicated that the Supreme Court possesses the power to regulate and discipline members of the bar for breach of their duties.

Careful review by this Court of the Order issued on November 5 by the Supreme Court of Rhode Island makes clear that the hearing which it purports to hold will provide this Plaintirf with full, Federal Con-

stitutional rights to due process and equal protection. She has the right to be represented by counsel of her choice, to cross-examine witnesses, and to compel the attendance of witnesses in her favor. Special Counsel has been appointed to replace Mr. Carter, and the Plaintiff has been given the right to enter subpoenaes, even though it may not have been within the timing she chose.

In sum, the Federal Constitutional charges advanced in this case by Plaintiff I find and rule to be without legal merit. Her complaint that she could not depose witnesses without the restrictions imposed under the applicable subsection of Rule 42, or that she might not have the right to conduct oral discovery is devoid of Federal Constitutional merit. See Miner v. Atlass, 63 U.S. 641 (1960).

Nor is there merit to the requirement she abide by the rule of confidentiality,

nor that she claims deprivation of right to trial by jury for clearly disciplinary bar proceedings are not within the Seventh Amendment right to jury trial. And the claim that a petition for certiorari to the United States Supreme Court may not likely be granted is not one of Constitutional dimension.

Given the strong legal preference that Federal Courts abstain from interference in proceedings of this type, and given the decision in cases such as Withrow v. Larkin, 421 U.S. 35 (1975), which puts in the hands of those who, like the Supreme Court of Rhode Island, must here function both as investigatory and judicatory officers, it is clear that there is no violation of the Constitutional rights of this Plaintiff.

Accordingly, I find and rule that it is unlikely that this Plaintiff will succeed on the merits of this litigation and I further find and rule that the public in-

terest in the prompt and efficacious disposition of complaints against lawyers will be adversely affected if she is granted injunctive relief from the proceedings now pending in the Supreme Court of Rhode Island. The request for relief by way of preliminary injunction or temporary restraining order accordingly must be and it is herewith denied. And the objection of the Plaintiff to these findings and rulings is herewith noted.

MRS. MUKA: Your Honor, I'd like to make a Rule 62(c) motion for injunction pending appeal.

THE COURT: And that motion is denied.

(Hearing concluded 4:13 p.m.)

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15.1(j)(iii) Judgment Appealed From

(same as 15.1(j)(i))

15.1(j)(iv) Notice of Appeal

(filed July 15, 1985)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPREME COURT

85-188 M.P.

No. DB-247

No. DB-248

FRANK A. CARTER, JR. :
:
CHIEF DISCIPLINARY COUNSEL :
:
v. :
:
BETTY O. MUKA :

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the undersigned respondent, BETTY O. MUKA, hereby appeals from the order of this court dated April 19, 1985 in the above entitled matters, to the United States Supreme Court, pursuant to the authority of Section 2101(c) of Title 28 of the United States Code, as of statutory right.

Dated: July 12, 1985

(signature of Betty O. Muka)

113 Kay St.

Ithaca, N. Y. 14850

(607) 257-2016

and

23 Carol Court

Providence, R. I. 02909

(401) 831-2282

Original to:

Clerk of the Rhode Island Supreme Court

250 Benefit St.

Providence, R. I. 02903

Copy to:

Kathleen Managhan, Esq.

Assistant Disciplinary Counsel

Corcoran, Peckham & Hayes, P.C.

P. O. Box 389

Newport, R. I. 02840

Copy to:

Frank A. Carter, Jr.

Disciplinary Counsel

250 Benefit St.

Providence, R. I. 02903

15.1(j)(v) Provisions of Law

(cited at 15.1(f))

Rhode Island Constitution, Article X

OF THE JUDICIAL POWER

Sec. 1 POWER VESTED IN COURTS. - The judicial power of this state shall be vested in one supreme court, and in such inferior courts as the general assembly may, from time to time, ordain and establish.

...

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Rhode Island Constitution, Articles of Amendment, Article XII

POWERS OF SUPREME COURT

Sec. 1. JURISDICTION OF SUPREME COURT. - The supreme court shall have final revisory and appellate jurisdiction upon all questions of law and equity. It shall have power to issue prerogative writs, and shall also have such other jurisdiction as may, from time to time, be prescribed by

law. A majority of its judges shall always be necessary to constitute a quorum. The inferior courts shall have such jurisdiction as may, from time to time, be prescribed by law.

...

****

Rhode Island Supreme Court Rule 42 et seq.

42. Complaints against attorneys.

42-1. Jurisdiction. - Any attorney admitted to practice law in this state, or any attorney specially admitted by a court of this state for a particular proceeding, is subject to the disciplinary jurisdiction of this court.

...

42-2 Grounds for discipline. - Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the code of professional responsibility as adopted and promulgated as a rule of this court, and failure

to comply with reasonable orders or requests of Disciplinary Counsel or the Disciplinary Board shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

42-3. Types of discipline. - Misconduct shall be grounds for:

(a) disbarment by this court: or

(b) suspension by this court for a period not exceeding five (5) years;

(c) public or private censure or admonition by this court.

42-4. Disciplinary board of this court. - (a) This court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Rhode Island" (hereinafter referred to as "the Board") which shall consist of nine (9) members of the bar of this state, one (1) of whom shall be designated by this court as Chairman

and another as Vice Chairman.

...

(c) The Board shall have the power and duty:

(1) to consider and cause to be investigated the conduct of any attorney on its own motion or upon complaint in writing by any person or as directed by this court;

(2) to review the findings and recommendations of the Chief Disciplinary Counsel, hereinafter referred to, with respect to formal charges and to prepare and forward its own findings and recommendations to this court, which shall review such findings and recommendations on the basis of the record and shall enter an appropriate order disposing of the proceeding:

...

(4) to adopt rules of procedure not inconsistent with these rules and ...

...

42-5 Disciplinary counsel. - (a) This

court shall sppoint a Chief Disciplinary Counsel (hereinafter referred to as "Counsel") and such assistants and staff as may from time to time be required to properly perform the functions hereinafter prescribed.

(b) Counsel shall have the power and duty: (1) to investigate all matters involving alleged misconduct which come to his attention whether by complaint or otherwise; (2) to recommend to the Board the disposition of all matters involving alleged misconcuct by dismissal or the prosecution of formal charges. Except in matters requiring dismissal because the complaint is frivolous on its face or falls outside the Board's jurisdiction, no disposition shall be recommended by Counsel until the respondent-attorney shall have been afforded an opportunity to state his position with respect to the allegations against him.

(3) to prosecute all disciplinary proceedings before the Board:

...

(6) to maintain permanent records of all matters processed and the disposition thereof.

42-6 Procedure. - (a) Investigation - All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Counsel. Upon the conclusion of an investigation, Counsel shall recommend to the Board the disposition of all matters involving alleged misconduct either by dismissal or by the prosecution of formal charges before the Board. The recommended disposition shall be reviewed by the Board which may approve or modify such recommendation. A respondent-attorney may demand as of right that a formal proceeding be instituted against him before the Board. In the event of such demand, the matter shall be disposed of in the same manner as

any other formal hearing instituted before the Board.

(b) Formal Hearing - Formal disciplinary proceedings before the Board shall be instituted by Counsel filing with the Board a petition setting forth with specificity the charges of misconduct. A copy of the petition shall be served upon the respondent-attorney. Within twenty (20) days thereafter, the respondent-attorney shall serve a copy of his answer upon Counsel and file the original thereof with the Board. In the event the respondent-attorney fails to file an answer, the charges shall be deemed at issue. Following the service of the answer, if there are any issues of fact raised by the pleadings or if the reqpondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to the Board, and Counsel shall serve a notice of hearing upon the respondent-attorney, or his

counsel, indicating the date and place of the hearing, at least fifteen (15) days in advance thereof. The notice of hearing shall advise the respondent-attorney that he is entitled to be represented by counsel, to summon and cross-examine witnesses and to present evidence in his own behalf.

In the event a division of the Board conducts a formal hearing, it shall receive evidence, make findings of fact and recommendations to the Board for Board action.

The Board shall submit a report to this Court within sixty (60) days after the conclusion of the hearing and submission of briefs, if any, containing its findings and recommendations, together with a record of the proceedings before it.

If after notice of hearing has been served any member of the Board assigned to hear the matter is unable to serve and no other member of the Board is available, a

former member of the Board, designated by the Chairman or Vice Chairman, is authorized and may sit in his stead.

(c) Annual Report - The Board shall annually in July report to this Court in writing all matters presented for its consideration during the year ended on the previous April 30.

(d) Review by this Court - If the Board determines that a proceedings should be dismissed, or that it should be concluded by private censure, it shall instruct Counsel to notify this Court of its recommendation, and this Court shall enter an appropriate order. If the Board shall determine that the matter should be concluded by a recommendation of public censure, suspension or disbarment, it shall submit its findings and recommendations, together with the entire record, to this Court, This Court shall review the record and enter an appropriate order.

Proceedings, if any, before this Court shall be conducted by Counsel.

(e) Duty to Cooperate - The failure of an attorney whose conduct is the subject of an investigation authorized by these rules to comply with the reasonable orders and requests of either Counsel or the Board shall constitute unprofessional conduct, and any such failure shall be referred forthwith to this Courr for such action as it deems appropriate.

42-7. Immunity. - Members of the Board, Counsel and staff shall be immune from suit for any conduct in the course of their official duties.

Complaints against members of the Board involving alleged violations of the code of professional responsibility shall be submitted directly to this court. Complaints against Counsel involving alleged violations of the code of professional responsibility shall be submitted directly to the Board.

...

42-11 Subpoena powers. - At any state of an investigation, Counsel shall have the right to summon witnesses and require production of records by issuance of sub-

poenas. A respondent-attorney shall have the right to summon witnesses and require production of records before the Board by issuance of subpoenas.

Said subpoenas shall be obtained by filing with the Clerk of this court a statement calling for the issuance of the subpoena. On the same day that this statement is filed with the Clerk, the party seeking the subpoena shall send by registered or certified mail a copy of said statement to either Counsel or the respondent-attorney, as the case may be. Upon the filing of the statement, the Clerk shall forthwith issue the subpoena, and it shall be served by a duly authorized officer.

Said subpoenas shall clearly indicate on their face that the subpoenas are issued in connection with a confidential investigation under these rules, and that it is regarded as contempt of this court or

grounds for discipline under these rules for a person subpoenaed to breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney.

All participants in the proceeding shall conduct themselves so as to maintain the cinfidentiality of the proceeding.

Any attack on the validity of a subpoena so issued shall be heard and determined by the Board.

Witnesses before the Board shall be examined under oath or affirmation.

Testimony may be taken by deposition or such other method as may be authorized by the Board if the witness is not subject to service of subpoena or is unable to attend or testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.

The subpoena and deposition procedure shall be subject to the protective requirements of confidentiality provided in Rule 42-21.

Any rule or rules of this court or any statute or statutes providing for discovery are not applicable in this type of proceeding, which proceeding shall be governed by these rules alone.

...

42-21 Confidentiality. - All proceedings involving allegations of misconduct by or incapacity of an attorney shall be kept confidential until and unless this court enters an order imposing some disciplinary sanction, except where the proceeding is predicated upon a conviction of the respondent-attorney for a crime. This provision shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidated, for admission to practice

or for government employment; provided, however, the fact of any dismissed complaint shall be deemed irrelevant to any such investigation. The Clerk of court shall transmit notice of all discipline imposed by this court, or transfers to inactive status due to incapacity, to the National Discipline Data Bank maintained by the American Bar Association.

****

Rhode Island General Laws 8-6-2

Rules of practice and procedure. - The supreme court, the superior court, the family court and the district court, by a majority of their members, shall have the power to make rules for regulating practice, procedure and business therein. The rules of the superior, family and district court shall be subject to the approval of the supreme court. Such rules, when effective, shall supersede any statutory regulation in conflict therewith.

In prescribing such rules the said court shall have regard to the simplification of the system of pleading, practice and procedure in the courts in which such rules shall apply, on order to promote the speedy determination of litigation on the merits; provided, however, that each respective court shall not in said rules of procedure require a party to a civil action to produce either by discovery, motion to produce or interrogatory an income tax return, W-2 statement, or copies thereof. The rules presently in effect in the courts of the judicial system shall remain and continue in force and effect until revised, amended, repealed, or superseded by rules adopted in accordance with this section.

****

United States Constitution Art. VI

MISCELLANEOUS PROVISIONS

... This Constitution, and the laws of the United States which shall be made in pursuance thereof: and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executives and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution ...

****

United States Constitution, Amendment XIV, Section 1 - Citizenship- Privileges and Immunities - Due process - Equal protection of laws. - All persons born or naturalized in the United States, and

subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

****

United States Constitution, Amendment I - Religious and political freedom. - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

****

Rhode Island Code of Professional Responsibility, selected Disciplinary Rules: DR 1-103(A) and (B) Disclosure of Information to Authorities. - (A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation. (B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

****

DR 7-102(A)(1), (2) and (6) Representing a Client Within the Bounds of the Law. (A)I his representation of a client, a lawyer shall not: (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of

his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another. (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law. ...(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

****

DR 7-106(C) Trial Conduct. - ... (C) In appearing in his professional capacity before a tribunal, a lawyer shall not: (1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence. (2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is

intended to degrade a witness or other person. (3) Assert his personal knowledge of the facts in issue, except when testifying as a witness. (4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt of innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein. (5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply. (6) Engage in undignified or discourteous conduct which is degrading to a tribunal. (7) Intentionally or habitually violate any established rule of procedure or of evidence.

****

DR 8-102(B) - Statements Concerning Judges

and Other Adjudicatory Officers. - (B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

****

DR 6-101(A)(3) Failing to Act Competently. - (A) A lawyer shall not: ... (3) Neglect a legal matter entrusted to him.

****

Supreme Court Rules of Appellate Procedure Section 1(b) - 1. Scope of rules. - ... (b) Rules Not to Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of any court as established by law.

****

Rhode Island General Laws 8-2-16 Motions for new trial - Extraordinary writs. - The superior court shall have jurisdiction of such motions for new trials as may be provided by law, ...

Rhode Island Constitution, Article I

(selected sections)

Sec. 2 - Laws for good of whole - ... All free governments are instituted for the protection, safety and happiness of the people. All laws, therefore, should be made for the good of the whole; ...

****

Sec. 5 - Remedies for wrongs - Right to justice. - Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

****

Sec. 6 Rights of accused in criminal proceedings. - In all criminal prosecutions, the accused shall enjoy the right to a

speedy and public trial, by an impartial jury; to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining them in his favor, to have the assistance of counsel in his defense, and shall be at liberty to speak for himself; nor shall he be deprived of life, liberty, or property, unless by the judgment of his peers, or the law of the land.

****

Sec. 13. Self-incrimination. - No man in a court of common law shall be compelled to give evidence criminating himself.

****

Sec. 14. Presumption of innocence - Securing of accused. - Every man being presumed innocent, until he is pronounced guilty by the law, no act of severity which is not necessary to secure an accused person shall be permitted.

Sec. 15. Trial by jury. - The right of trial by jury shall remain inviolate.

****

Rhode Island Rules of Criminal Procedure

Sec. 23(a) - Trial by jury or by the court. - (a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant in open court waives a jury trial in writing with the approval of the court.

****

Rhode Island Rules of Civil Practice (selected portions of rules)

R.C.P. 5(e) - Service and filing of pleadings and other papers. - ... (e)Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, ...

****

R.C.P. 26(a). - Depositions pending action. - (a) When Depositions May Be Taken. Any

party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court ... The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

****

R.C.P. 27(a) - Depositions before action or pending appeal. - (a) Before Action. The perpetuation of testimony regarding any matter which may be cognizable in this court shall be in accordance with the statutes of this state. ...

****

RCP. 28(a) Persons before whom depositions may be taken. - (a) Within the State. Within the state depositions shall be taken before an officer authorized to admini-

ister oaths by the law of the state or before a person appointed by the court. A person so appointee has the power to administer oaths and take testimony.

****

R.C.P. 30(a) Depositions upon oral examination. - (a) Notice of Examination: Time and Place. A party desiring to take the depositon of any person upon oral examination shall give reasonable notice in writing to every other party to the action not in default. ...

****

R.C.P. 31. Depositions of witnesses upon written interrogatories. - (a) ... Notice. A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party not in default with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before

whom the deposition is to be taken. ...

****

RCP 33 Interrogatories to parties. - (a) Availability: Answers: Objections. Any party may serve upon any adverse party written interrogatories to be answered by the party served, ... Interrogatories may be served after commencement of the action and without leave of court ... The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within forty (40) days after the service of the interrogatories....

****

RCP 34 Production of documents and things and entry upon land for inspection for other purposes. - (a) Scope. Subject

to provisions of Rule 30(b), any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, ... and any other data compilations from which intelligence can be perceived, ...) or to inspect and copy, test, ... any tangible thing which constitutes or contains matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection .... the property or any designated object or operation thereon, within the scope of Rule 26(b). (b) Procedure. The request may, without leave of court, be served upon the plaintiff

after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. ... The party upon whom the request is served shall be obligated to comply therewith unless ...

****

R.C.P. 36 Admission of facts and of genuineness of documents. - (a) Request for Admission. After commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuine ness of any relevant matters of fact set forth in the request. ... Each of the mattersof which an admission is requested shall be deemed admitted unless ...

****

R.C.P. 37. Refusal to make discovery - Consequences. - (a) Refusal to Answer. If a party or other deponent refuses to answer any question propounded upon oral

examination, the ... (person asking it) may apply to the court for an order compelling an answer. Upon the failure of a deponent or party to answer any interrogatories submitted under Rule 31 or Rule 33, ... or upon the failure of a party to make discovery as requested under Rule 34, the proponent of the question or the requesting party may make like application for such an order. If the motion is granted the court shall ...require the party or deponent .. or attorney advising such conduct ... to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, ... (b) Failure to Comply With Order. - (1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court, the refusal may be considered a contempt of court. (2) Other Consequences. .... (i) ... facts shall be

taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order. (ii) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony... (iii) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party.... (iv) order directing arres of any party ... (c)Expenses on Refusal to Admit. ... under Rule 36 ... order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees....

****

R.C.P. 38 Jury trial of right. - (a)

Right Preserved. The right of trial by jury as declared by Article I., Section 15 of the constitution of this state or as given by a statute shall be preserved to the parties inviolate. (b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

****

R.C.P. 39. Trial by jury or by the court. - (a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the

court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist und r the constitution or statutes of this state. ...

****

R.C.P. 45. - Subpoena. - (a) For Attendance of Witnesses: Form: Issuance. Every subpoena shall be issued by the clerk of court or a notary public or other officer authorized by statute, ... shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. (b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly

and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. (c) Service. A subpoena may be served by the sheriff, by his deputy, by a constable, or by any other person who is not a party and is not less than eighteen (18) years of age. ... (e) Subpoena for a Hearing or Trial. Subpoenas for attendance at a hearing or trial shall be issued at the request of any party. (f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court in which the action is pending.

****

R.C.P. 59. New trials - Amendment of judgments. - (a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of this state; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of this state. ... (b) Time for Motion. A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment. A copy of the motion for a new trial shall be filed with the trial justice contemporaneously with its filing with the clerk of the court. (c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the

motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits. (d) On Initiative of Court. Not later than ten (10) days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therfor. ...

****

United States Constitution, Amendment 5
Presentment or indictiment - double jeopardy - Self-incrimination - Due process - Compensation for private property. - No person shall be held to answer for a capital, or otherwise infamous crime, un-

less on a presentment or indictment of a grand jury, except ...; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use...

****

United States Constitution, Amendment 6
Rights of accused in criminal prosecutions. - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses

in his favor, and to have the assistance of counsel for his defense.

****

Title 28 U.S.C. 1981 - Equal rights under the law. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of of every kind, and to no other.

Supreme Court, U.S.
FILED
SEP 9 1985

No. 85-123

In the Supreme Court of the United States

OCTOBER TERM, 1985

BETTY O. MUKA,
APPELLANT,

v.

FRANK A. CARTER, JR.,
CHIEF DISCIPLINARY COUNSEL,
APPELLEE.

MOTION TO DISMISS APPEAL FROM THE RHODE ISLAND SUPREME COURT

KATHLEEN MANAGHAN*
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I

Questions Presented

1. Was the April 19, 1985 Order of the Rhode Island Supreme Court a final judgment or decree?

2. Should Appellant's constitutional challenges to the Disciplinary Rules of the Rhode Island Supreme Court be heard initially in the U.S. District Court?

3. Does this Court have jurisdiction to review the Questions Presented by Appellant which do not raise federal issues?

4. Should Appellant have requested review of the April 19, 1985 Order of the Rhode Island Supreme Court by certiorari?

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In the
Supreme Court of the United States

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No. 85-123

BETTY O. MUKA,
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v.

FRANK A. CARTER, JR.,
CHIEF DISCIPLINARY COUNSEL,
APPELLEE.

MOTION TO DISMISS APPEAL FROM THE RHODE ISLAND SUPREME COURT

Opinion Below

The Opinion of the Rhode Island Supreme Court in the instant case is cited at 491 A.2d 334 and is set forth in Appellant's Appendix at pages A-1 through A-6.

Statutory Provisions Involved

28 U.S.C. Section 1257. State courts; appeal; certiorari
Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Also relevant are Rhode Island Supreme Court Disciplinary Rule 42-4, cited at A-1; Rhode Island Disciplinary Rule 42-5, cited at A-2; and Rhode Island Disciplinary Rule 42-6, cited at A-3.

Statement of the Case

This appeal comes before this Court as a request to review an Order of the Rhode Island Supreme Court, which Order directed the suspension of Appellant Betty O. Muka from the pactice of law in the State of Rhode Island. Appellee Frank A. Carter, Jr., Chief Disciplinary Counsel, hereby moves that said appeal be dismissed on the grounds that this Court lacks jurisdiction to entertain the same pursuant to the provisions of 28 U.S.C. Section 1257.

Appellee Frank A. Carter, Jr. is Chief Disciplinary Counsel for the Supreme Court of the State of Rhode Island with the responsibility for investigating, and if necessary, prosecuting alleged infractions by members of the Bar of the State of Rhode Island of Disciplinary Rules of the Rhode Island Supreme Court governing attorneys practicing in the State of Rhode Island. (See Rule 42-5, Supreme Court Disciplinary at A-2). On or about June 4, 1984, Appellee filed two Petitions

for Disciplinary Action in the Clerk's Office of the Rhode Island Supreme Court, alleging a number of violations by Appellant of said Disciplinary Rules. Such violations included accusing a respected member of the Rhode Island judiciary of accepting a bribe to dispose of a case and of being a member of organized crime. Ordinarily, the filing of such a Petition would be followed by a hearing before one of three Disciplinary Boards. (See Rule 42-4, Supreme Court Disciplinary Rules at A-1, and Rule 42-6, Supreme Court Disciplinary Rules at A-3). The Rhode Island Supreme Court would then review the findings and recommendations of the Disciplinary Board. However, prior to June 4, 1984, Appellant had already filed her own Disciplinary Petitions against all nine Board members, who thereupon recused themselves from hearing Appellee's Petitions. Therefore, the Rhode Island Supreme Court was the only remaining disciplinary forum available before which testimony in support of Appellee's Petitions could be presented. Following the filing of said Petitions, and Appellant's responses thereto, hearings therefore took place before the Rhode Island Supreme Court, which included the taking of testimony from numerous witnesses over a period of six months from November, 1984, through April, 1985. Those hearings resulted in the entry of the subject Order by the Rhode Island Supreme Court dated April 19, 1985, suspending Appellant from the practice of law in the State of Rhode Island.

Shortly before the disciplinary proceedings against Appellant were to begin in the Rhode Island Supreme Court, she filed a 53 page verified Complaint in the Federal District Court for the District of Rhode Island, alleging numerous state and federal constitutional infirmities in the Disciplinary Rules themselves and with regard to their application to her. The cause was initially filed in the United States District Court for the District of Rhode Island, but was transfered by that Court to the District of New Hampshire, due to the fact that Appel-

lant Muka had named as parties Defendant all of the justices of the Rhode Island Supreme Court as well as most of the judges on the Rhode Island Superior Court (Rhode Island's chief trial court), all jurists who had allegedly denied Appellant her constitutional rights at some time in the past. (See heading of Appellant's Complaint at A-5). Among the prayers for relief contained in that Complaint was a prayer for an injunction against the commencement of the pending disciplinary proceedings. Pursuant to that prayer, an evidentiary hearing was held before the Honorable Shane Devine, U.S. District Judge for the District of New Hampshire, the day before the disciplinary proceedings were to begin. Appellant's request for an injunction was denied in a holding which determined that Appellant's constitutional due process rights were being adequately protected by the Rhode Island Supreme Court. Appellant Muka appealed Judge Devine's decision to the United States Court of Appeals for the First Circuit, which on April 24, 1985 affirmed Judge Devine's order (see decision of the United States Court of Appeals for the First Circuit *in re: Betty O. Muka* v. *The Supreme Court of the State of Rhode Island, et al.* at A-7). Appellant has not sought further review of this decision. The federal cause has now been remanded back to the District Court in New Hampshire for further disposition of Appellant Muka's remaining claims.

Reasons For Granting Motion To Dismiss

I. The Order Appealed From Was Not A Final Judgment Or Decree.

Appellee believes that this Court lacks jurisdiction to review the April 19, 1985 Order of the Rhode Island Supreme Court because said Order was an interlocutory Order only, entered immediately after the culmination of the Disciplinary hearings concerning Appellant, because the Rhode Island Supreme Court deemed it advisable to effect an immediate suspension

of Appellant Muka from the practice of law in Rhode Island. The Rhode Island Supreme Court expressly stated in its Order that a complete Opinion and Final Decision would follow (see Order of Rhode Island Supreme Court at A-6, Appendix to Jurisdictional Statement of Appellant), setting forth in greater detail reasons for the suspension, and possibly providing for additional disciplinary actions.

Pursuant to 28 U.S.C. Section 1257, jurisdiction is given to this Court to review only final judgments or decrees of the highest court of a state. Such a final judgment has not as yet been entered in this matter. This Court has previously held in *Radio Station WOW Inc.* v. *Johnson*, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945), that:

> "considerations of English usage as well as those of judicial policy would readily justify an interpretation of the 'final judgment' so as to preclude reviewability if anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State."

The Rhode Island Supreme Court Order appealed from refers to the possibility of further disciplinary action which might be a part of that court's final decision. Also remaining to be included by the Rhode Island Supreme Court in a final ruling are additional grounds—not mentioned in the interlocutory order—for its suspension of Appellant. It is clear from the wording of the Order appealed from that this is not a final judgment or decree as required by 28 U.S.C. Section 1257.

II. Appellant's Constitutional Challenges To The Disciplinary Rules Of The Rhode Island Supreme Court Should Be Heard Initially In The Pending Federal District Court Proceeding.

A number of Appellant's Questions Presented (specifically 11, 16, 17, 19, 13—Appellant commences re-numbering after

question 21—15, 16, 17, 19,) assert federal constitutional challenges to the Rhode Island Supreme Court Disciplinary Rules themselves without specific reference to their application to Appellant in the proceedings in the Rhode Island Supreme Court. Those same constitutional challenges to the Disciplinary Rules are repeated in Appellant's pending District Court action in Claim No. 2.

This court in *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 1316-1317, 75 L.Ed.2d 206 (1983) expressly stated that Federal District Courts have subject matter jurisdiction to entertain challenges to state bar rules. The U.S. District Court for the District of New Hampshire will as part of its disposition of Appellant's Complaint, be ruling on Appellant's constitutional challenges to certain of the Rhode Island Supreme Court Disciplinary Rules. Since the Rhode Island Supreme Court did not itself address the constitutionality of the Disciplinary Rules in its Order—giving this Court no constitutional determination to review—Appellant ought not to be allowed to compel this Court to be the Court of first instance in making these constitutional determinations.

In addition, the only constitutional issues raised by Appellant before the Rhode Island Supreme Court—either concerning the Disciplinary Rules themselves, or concerning their application to her—were those raised in Questions Presented numbers 17 and 19 (immunity from suit of the members of the Disciplinary Boards, and infringement of her First Amendment rights of freedom of speech). This Court ought therefore to decline to accept for review any of the constitutional issues raised by Appellant save these two. *Cardinale* v. *Louisiana*, 394 U.S. 437, 87 S.Ct. 1161, 22 L.Ed.3d 398 (1969).

III. This Court Lacks Jurisdiction To Review by Appeal Questions Presented by Appellant Which Do Not Raise Federal Issues.

28 U.S.C. Section 1257 provides for appellate review by this Court of final judgments or decrees rendered by the highest court of a state:

(1) By appeal where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of its validity.

Most of the Questions Presented by Appellant raise no federal statutory or federal Constitutional issue, but call only for the construction of the statutory or Constitutional law of the State of Rhode Island. Specifically those Questions Presented which raise no federal issue are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 (general reference to "constitutionality", but not specific reference as to which constitution, e.g. federal or state, and appropriate section), 13, 14, 15, 20, 21, 21, (second numbering—again a general reference to unconstitutional application of a Disciplinary Rule without reference to which constitution), 22—additional reference to unconstitutional treatment without further specificity, 23—further vague reference to unconstitutionality 24, 26—further vague reference to constitutionality, 27, 28, 29, 30, 31, 32—further vague reference to unconstitutionality, 33, 34, 36, 38, 39, 40, 41, 42, 43, 44 and 45.

As to those Questions Presented, which refer vaguely to some form of unconstitutionality, neither Appellee nor this court should be compelled to guess to which section of which constitution, federal or state, Appellant wishes to refer. None

of the enumerated Questions Presented draw into question the kind of federal issue referred to in the quoted sections of 28 U.S.C. Section 1257. Therefore as to these recited Questions Presented this appeal ought to be dismissed.

IV. Appellant Ought To Have Requested Review of the April 19, 1985 Order of the Rhode Island Supreme Court by Certiorari Rather than by Appeal.

Appellant clearly has sought review of the April 19, 1985 Order of the Rhode Island Supreme Court suspending her from the practice of law by appeal rather than by certiorari. She argues on page 51 of her Jurisdictional Statement that her appeal is authorized by Section 1257(2) of Title 28 of the United States Code. Her Jurisdictional Statement is clearly entitled "Appeal from the Rhode Island Supreme Court" and the Notice and Appearance papers mailed to Appellee from Appellant and from the Supreme Court Clerk's Office style this cause as an appeal and not a Petition for Writ of Certiorari.

This Court, in reviewing disciplinary actions against attorneys rendered by the highest court of a state, has always reviewed such matters by certiorari (see cases collected by this Court in footnote 15 of *District Court of Appeals* v. *Feldman*, *supra*, 103 S. Ct. 1303, 1314); it has been specifically held that orders of a state court relating to the admission, discipline and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court. See *MacKay* v. *Nesbett*, 412 F.2d 846 (9th Cir. 1969). Appellant Muka's attempt to obtain review of the contested Supreme Court Order by appeal is therefore procedurally defective and her appeal ought to be dismissed.

On page 52 of her Jurisdictional Statement Appellant claims that a Writ of Certiorari is also authorized to her by 28 U.S.C. Section 1257(3). Appellant has not filed a Petition for a Writ of Certiorari. She has filed with this Court and provided Appellee with a copy of a "Notice of Appeal" presumably in compli-

ance with Rule 10.1 of the Rules of the Supreme Court of the United States. Appellant ought not to be allowed to seek her relief in the alternative.

Conclusion

For the aforesaid reasons, Appellee Frank A. Carter, Jr., Chief Disciplinary Counsel, respectfully requests that the Appeal of Betty O. Muka, from an Order of the Rhode Island Supreme Court dated April 19, 1985, be dismissed.

Respectfully submitted,

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Counsel for Appellee

* *Attorney of Record*

APPENDIX A

SUPREME COURT DISCIPLINARY RULES

42-4. Disciplinary board of this court. — (a) This court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Rhode Island" (hereinafter referred to as "the Board") which shall consist of nine (9) members of the bar of this state, one (1) of whom shall be designated by this court as Chairman and another as Vice Chairman.

(b) When the Board is first selected, three (3) of its members shall be appointed for a term of one (1) year, three (3) for a term of two (2) years, and three (3) for a term of three (3) years. All terms thereafter shall be for three (3) years, and no member shall serve for more than six (6) years. The Board shall act only with the concurrence of not less than five (5) members. Five (5) members shall constitute a quorum. The terms of the members shall commence on May 1, 1975.

(c) The Board shall have the power and duty:

(1) to consider and cause to be investigated the conduct of any attorney on its own motion or upon complaint in writing by any person or as directed by this court;

(2) to review the findings and recommendations of the Chief Disciplinary Counsel, hereinafter referred to, with respect to formal charges and to prepare and forward its own findings and recommendations to this court, which shall review such findings and recommendations on the basis of the record and shall enter an appropriate order disposing of the proceeding;

(3) to consider and cause to be investigated information that an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, and to petition this court for a determination when deemed advisable;

(4) to adopt rules of procedure not inconsistent with these rules and to provide for the arbitration of fee disputes, which apparently do not involve violations of the code of professional responsibility, upon complaints of clients against their attorneys; and

(5) to maintain permanent records of all matters processed and the disposition thereof. (As amended by the court on January 8, 1976.)

42-5. **Disciplinary counsel.** — (a) This court shall appoint a Chief Disciplinary Counsel (hereinafter referred to as "Counsel") and such assistants and staff as may from time to time be required to properly perform the functions hereinafter prescribed.

(b) Counsel shall have the power and duty:

(1) to investigate all matters involving alleged misconduct which come to his attention whether by complaint or otherwise;

(2) to recommend to the Board the disposition of all matters involving alleged misconduct by dismissal or the prosecution of formal charges. Except in matters requiring dismissal because the complaint is frivolous on its face or falls outside the Board's jurisdiction, no disposition shall be recommended by counsel until the respondent-attorney shall have been afforded the opportunity to state his position with respect to the allegations against him;

(3) to prosecute all disciplinary proceedings before the Board;

(4) to appear at hearings before this court with respect to motions for reinstatement by suspended or disbarred attorneys, to cross-examine witnesses testifying in support of the motion and to marshall available evidence, if any, in opposition thereto;

(5) to take such steps as may be necessary to ascertain and to inform this court whenever an attorney has

been declared incompetent or committed on the grounds of incompetency or disability; and

(6) to maintain permanent records of all matters processed and the disposition thereof.

42-6. Procedure. — (a) Investigation — All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Counsel. Upon the conclusion of an investigation, Counsel shall recommend to the Board the disposition of all matters involving alleged misconduct either by dismissal or by the prosecution of formal charges before the Board. The recommended disposition shall be reviewed by the Board which may approve or modify such recommendation. A respondent-attorney may demand as of right that a formal proceeding be instituted against him before the Board. In the event of such demand, the matter shall be disposed of in the same manner as any other formal hearing instituted before the Board.

(b) Formal Hearing — Formal disciplinary proceedings before the Board shall be instituted by Counsel filing with the Board a petition setting forth with specificity the charges of misconduct. A copy of the petition shall be served upon the respondent-attorney. Within twenty (20) days thereafter, the respondent-attorney shall serve a copy of his answer upon Counsel and file the original thereof with the Board. In the event the respondent-attorney fails to file an answer, the charges shall be deemed at issue. Following the service of the answer, if there are any issues of fact raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to the Board, and Counsel shall serve a notice of hearing upon the respondent-attorney, or his counsel, indicating the date and place of the hearing, at least fifteen (15) days in advance thereof. The notice of hearing shall advise the respondent-attorney that he is entitled to be represented by counsel, to summon and cross-examine witnesses and to present evidence in his own behalf.

The Board shall submit a report to this court within sixty (60) days after the conclusion of the hearing and submission of briefs, if any, containing its findings and recommendations, together with a record of the proceedings before it.

(c) Annual Report — The Board shall annually in July report to this court in writing all matters presented for its consideration during the year ended on the previous April 30.

(d) Review by this Court — If the Board determines that a proceeding should be dismissed, or that it should be concluded by private censure, it shall instruct Counsel to notify this court of its recommendation, and this court shall enter an appropriate order. If the Board shall determine that the matter should be concluded by a recommendation of public censure, suspension or disbarment, it shall submit its findings and recommendations, together with the entire record, to this court. This court shall review the record and enter an appropriate order. Proceedings, if any, before this court shall be conducted by Counsel.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CIVIL ACTION NO. _____

BETTY O. MUKA,
PLAINTIFF,

v.

THE SUPREME COURT OF THE STATE OF RHODE ISLAND, JOSEPH A. BEVILACQUA, THOMAS F. KELLEHER, JOSEPH R. WEISBERGER, FLORENCE KERINS MURRAY, DONALD F. SHEA, WALTER J. KANE, BRIAN B. BURNS, BEVERLY CLARK, RONALD A. TUTALO, THE STATE OF RHODE ISLAND, DISCIPLINARY COUNSEL, FRANK A. CARTER, JR., DISCIPLINARY BOARD, ERNEST AGRESTI, MELVIN A. CHERNICK, LEONARD KIERNAN, ROBERT KILMARX, LEWIS Z. LAVINE, JEREMIAH C. LYNCH, NANCY PALMISCIANO, ANTHONY VACCA, RONALD R. LAGUEUX, KENNETH P. BORDEN, ARTHUR G. CAPALDI, JOSEPH Q. CALISTA, JOSEPH F. RODGERS, COMMISSION ON JUDICIAL DISCIPLINE AND TENURE, RAYMOND J. SURDUT, KENNETH J. MACKSOUD, ROSENSTEIN SURDUT MACKSOUD & GOODWIN, B. LUCIUS ZARLENGA, EDWARD P. SOWA, GUNNING LAFAZIA & GNYS INC., JOHN B. REILLY, CLIFFORD J. CAWLEY, J. JOSEPH NUGENT, STEPHEN NUGENT, MARK T. NUGENT, THOMAS R. DESIMONE, JOHN T. BEVILACQUA, JOSEPH A. KELLY, DAVID W. CARROLL, MARK S. MANDELL, LOUIS B. RUBENSTEIN, ALFRED G. THIBODEAU, JOHN F. DOLAN, THOMAS H. NEEDHAM, NUGENT & NUGENT, LEONA CHARPENTIERE, JOHN DOE LAW CLERK OF THOMAS H. NEEDHAM, CHARLES F. TRUMPETTO, HENRY E. LALIBERTE, GORHAM & GORHAM, ALICE MILES, RUTH GORHAM, BRADFORD GORHAM, JOHN GORHAM, ARTHUR M. READ II, NICHOLAS BARRETT, ERNIE DIBELLO, ALEXANDER WALSH, MARY KING, SUPREME COURT CLERK'S OFFICE, SUPERIOR COURT CLERK'S OFFICE, ANTHONY A. GIANNINI, C. RUSSELL BENGTSON, CAROL A. CAMPAGNONE, ROSALIND CHASET, DOMINIC F. CRESTO, WILLIAM EGAN, HARRY M. IONNATTI, JOHN B. LAWLOR, LESLIE D. LEMIEUX, KATHLEEN MANAGHAN, MEDICAL MALPRACTICE JOINT UNDERWRITERS ASSOCIATION OF RHODE ISLAND, and other John and Jane Does unknown at this time, PEERLESS INSURANCE COMPANY, ROSALIND CHASET AS ADMINISTRATRIX OF THE ESTATE OF THE LATE NATHAN D. CHASET, PIRRAGLIA, 6TH DISTRICT COURT CLERK'S OFFICE,
DEFENDANTS.

JURISDICTION

28 U.S.C. 1331, 1332, 1343, etc.

SUBSTANTIVE LAW

42 U.S.C. 1980, 1981, 1983, 1985, 1986, 2000a, etc., common law tort, agency & contract law, United States Constitution Art. VI, Sec. 2, and Amendments #1, 7, 10, 11, 14, etc., the Rhode Island Constitution, and general laws, Pub. L. 90-284, Title VIII, etc.

REMEDIES

28 U.S.C. 1331, 1343, 2201, 2202, 2283, 1651, common law, etc.

APPENDIX C

United States Court of Appeals
For the First Circuit

No. 84-2036

BETTY O. MUKA,

PLAINTIFF, APPELLANT,

v.

THE SUPREME COURT OF THE STATE OF RHODE ISLAND, ET AL.,

DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE
[HON. SHANE DEVINE, *U.S. District Judge*]

Before
CAMPBELL, *Chief Judge*,
BREYER AND TORRUELLA, *Circuit Judges*.

Betty O. Muka on brief pro se.
Marilyn F. McGair and *Thomas Dickinson*, Special Assistant Attorneys General, and *Arlene Violet*, Attorney General, on brief for appellees.

April 24, 1985

Per Curiam. Plaintiff, a lawyer facing disciplinary proceedings before the Supreme Court of Rhode Island, appeals from the denial of her motion for a preliminary injunction to enjoin the disciplinary proceedings on the grounds that the state constitution and various court rules are unconstitutional and that she has been denied due process in the proceedings.

Absent bad faith, harassment, or other extraordinary circumstances, federal courts must abstain from interfering with state disciplinary proceedings. *Middlesex County Ethics Committee* v. *Garden State Bar Association*, 457 U.S. 423 (1982). Pointing to her 53 page verified complaint and other pleadings, plaintiff contends she has shown the necessary bad faith. However, an evidentiary hearing was held on plaintiff's motion for a preliminary injunction, after which the district court referred to abstention principles and found that the hearing the state court intended to hold would afford plaintiff due process and that it was unlikely plaintiff would succeed on the merits of her claims. Plaintiff has not furnished us with a transcript of the evidentiary hearing, and hence on the record before us we see no error or abuse of discretion in the denial of preliminary injunctive relief. *See Muniz Ramirez* v. *Puerto Rico Fire Services*, No. 84-1650, slip. op. at 2-3 (1st Cir. April 1, 1985) (appellant's duty to furnish transcript).

Plaintiff's motion to strike the Attorney General's brief is denied. The Attorney General's motion for double costs is granted; attorneys fees are denied.

Affirmed.

United States Court of Appeals
For the First Circuit

No. 84-2036

BETTY O. MUKA,
PLAINTIFF, APPELLANT,

v.

THE SUPREME COURT OF THE STATE OF RHODE ISLAND, ET AL.,
DEFENDANTS, APPELLEES.

JUDGMENT
ENTERED: APRIL 24, 1985

This cause came on appeal from the United States District Court for the District of New Hampshire, and was submitted on the original record and the briefs.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed. Double costs to appellees, Rhode Island Supreme Court, Et Al.

By the Court:

FRANK P. SCIGLIANO, *Clerk*.

Supreme Court, U.S.
FILED
OCT 8 1985
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-123

BETTY O. MUKA,
APPELLANT,

v.

FRANK A. CARTER, JR.,
CHIEF DISCIPLINARY COUNSEL,
APPELLEE.

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL FROM THE RHODE ISLAND SUPREME COURT

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In the
Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-123

BETTY O. MUKA,
APPELLANT,

v.

FRANK A. CARTER, JR.,
CHIEF DISCIPLINARY COUNSEL,
APPELLEE.

BRIEF OPPOSING MOTION TO DISMISS APPEAL

Answers to Questions Presented by Appellee

1. Yes. The April 19, 1985 Order of the Rhode Island Supreme Court was a final judgment or decree. (491 A.2d 334 (R.I.1985))

2. No. Appellant's constitutional challenges to the Disciplinary Rules of the Rhode Island Supreme Court should be heard in the United States Supreme Court on the instant appeal, as of statutory right. (28 U.S.C. 1257(2))

3. Yes. This Court does have jurisdiction to review the Questions Presented by Appellant which "do not raise federal issues." (i.e. Fiske v. Kansas)

4. No. Appellant should not have requested review of the April 19, 1985 Order of the Rhode Island Supreme Court by certiorari. (I.e. Zauderer case)

ARGUMENT

ANSWER # 1 - YES. THE APRIL 19, 1985 ORDER OF THE RHODE ISLAND SUPREME COURT WAS A FINAL ORDER OR DECREE.

5. As a matter of fact, the Rhode Island Supreme Court Clerk has docketed the Order of indefinate suspension of Appellant attorney, dated April 19, 1985, as a final judgment. (Verified by telephone to Beverly Clark in the Rhode Island Supreme Court Clerk's Office on September 30, 1985.)

6. As a matter of fact, the Rhode Island Supreme Court Reporter has reported the Order dated April 19, 1985 as an official

decision of the Rhode Island Supreme Court and it has been officially reported at 491 A.2d 334.(R.I. 1985). (No R.I. Reports yet.)

7. Rhode Island Supreme Court Rule 42-15(d) states inter alia that "Orders imposing suspension or disbarment shall be effective immediately unless this court otherwise directs. ..." The order of suspension of Appellant did not "otherwise direct" and the suspension was instant.

8. Rhode Island Supreme Court Rule 25 is entitled "Reargument" and states inter alia, "Petitions for reargument of causes heard and decided shall be filed in the office of the clerk within five (5) days after the filing of the decision." The order dated April 19, 1985 did not reach Appellant until April 29, 1985, after the time for petitioning for reargument had expired. Appellant did not petition for reargument, and the Order

became unreviewable by any court in the State of Rhode Island on April 24, 1985.

9. Rhode Island General Laws, Title 8, Chapter 7, Section 1 states inter alia, "The supreme court shall be in session at Providence from the first Monday in October in each year to the second Monday in July in the succeeding year, ..." Thus, the term of the Rhode Island Supreme Court in which the order dated April 19, 1985 was made, ended on July 8, 1985, and that court lost any jurisdiction it might have claimed that it had on July 8, 1985.

10. Appellant filed and docketed her Notice of Appeal and Jurisdictional Statement on July 18, 1985, after the Rhode Island Supreme Court lost all possible claim to any jurisdiction on July 8, 1985, and within 90 days of entry of the order dated April 19, 1985, thus effectively and timely taking her appeal as of right under Title 28 U.S.C. 1257(2).

11. At one time, the United States Supreme Court took the narrow view that finality was to be determined solely from the face of the judgment. Houston v. Moore, 3 Wheat. 433 (1816).

12. More liberal views of finality were expressed from time to time, and the position has now been expanded so that the Court will look not only to the judgment and opinion but also, where necessary, to any other pertinent factor within or without the record. Department of Banking v. Pink, 317 U.S. 264, 268.(1942).

13. This Court should consider that Appellant has been suspended since April 19, 1985 (over 5 months as of this writing) from the practice of law, without any further decision or order of the Rhode Island Supreme Court, and when any jurisdiction it ever claimed must have expired as a matter of Rhode Island law, and that the Order of suspension dated April 19, 1985 did

not state that Appellant was guilty of the violation of any specific Disciplinary Rule or Ethical Consideration, nor did it make any findings of fact, when under traditional principlies of constitutional due process of law there must be findings of fact and conclusions of law before a decision is made and particularly before action is taken, and the court must have jurisdiction before it does anything - all of which were lacking at bar.

14. Rhode Island due process standards are exhibited in the Rhode Island Rules of Civil Procedure, Rule 52(a) which requires inter alia that:

> "In all actions tried upon the facts without a jury ..., the court shall find the facts specially and state separately its conclusions of law thereon... which constitute the grounds of its action."

But the Rhode Island Supreme Court did not do that when it rendered its Order of suspension dated April 19, 1985.

15. Even under Rhode Island case law purportedly "Interlocutory orders will be treated as possessing sufficient elements of finality and reviewed immediately when such a determination is necessary to prevent injurious consequences" as at bar. State v. Piedmont Funding Corp., 394 A.2d 694 (R.I. 1978).

16. But the ultimate test of finality is formulated by the Supreme Court. As stated in Department of Banking v. Pink, supra at 268:

> "The test is not whether under local rules of practice the judgment is denominated final ... but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court."

At bar, the Rhode Island Supreme Court is supposed to be the appellate court in disciplinary proceedings (Supreme Court Rule 42-6, and Rhode Island Constitution Amendment XII for all cases), but without ori-

ginal jurisdiction it conducted the one and only hearing, without any possibility of review by any court in the State of Rhode Island. The action taken by it is not subject to further review by any Rhode Island court; not even itself.

17. The rights in issue were fully adjudicated by the Rhode Island Supreme Court. Appellant pleaded 20+defenses, including the lack of subject matter and personal jurisdiction to pervert Appellant's sworn statements against judges and attorneys into a disciplinary proceeding against the one who reported such, and including challenges that certain disciplinary rules of conduct and procedure were unconstitutional on their face and as applied to her and the class of attorneys of which she was a member, and that the Constitution of the State of Rhode Island was unconstitutional, all under the United States Constitution, Amendments #1 and #14 and in violation of

her federal rights guaranteed thereunder to freedom of speech, constitutional due process of law and equal protection of law. The Rhode Island Supreme Court, by its Order dated April 19, 1985 showed that it ignored the constitutional challenges to the laws and applied them unconstitutionally and would not uphold or enforce any of such federal rights, and sought to prevent any review of its acts by any court. In effect, the federal rights in issue were fully adjudicated to not exist, and the Rhode Island Supreme Court intended that adjudication to be final and forever unreviewable. The United States Supreme Court has jurisdiction to review such.

18. An order has been held to be final even though the details had not yet been determined, as at bar. Brown Shoe Co. v. United States, 370 U.S. 294 (1961).

19. An administrative order is final which establishes the legal rights and re-

lationships as to which liabilities or sanctions may accrue, as at bar. Rochester Telephone Corp. v. United States, 307 U.S. 125, 130-1. (1939).

20. An administrative order was deemed final which fixed a definite status to which sanctions attached and could not be reopened or collaterally attacked in any other proceeding, as at bar. LaCrosse Telephone Corp. v. Wisconsin Board, 336 U. S. 18. (1948).

21. The United States Supreme Court has ruled that:

> "The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment ... Our test is a practical one. When the case is decided, the time to seek our review begins to run."

Market Street R. Co. v. Railroad Commission 324 U.S. 548, 551-2. (1945).

22. No further order of the Rhode Island Supreme Court can change the fact that such

Rhode Island Constitution, Supreme Court Rule 42 and specific Disciplinary Rules were applied to Appellant and as a result she was suspended from the practice of law, in derrogation of her federally guaranteed rights and when such laws were repugnant to the United States Constitution and laws, and Appellant is aggrieved thereby, and has no right to review anywhere except in the United States Supreme Court.-

ANSWER # 2 - NO. APPELLANT'S CONSTITUTIONAL CHALLENGES TO THE DISCIPLINARY RULES OF THE RHODE ISLAND SUPREME COURT SHOULD BE HEARD IN THE UNITED STATES SUPREME COURT ON THE INSTANT APPEAL, AS OF STATUTORY RIGHT, NOT INITIALLY IN THE U.S. DISTRICT COURT. (28 U.S.C. 1257(2))

23. It is an irrelevant question to ask whether or not there is some other court with jurisdiction over the issues at bar. The only correct question is whether

or not the United States Supreme Court has jurisdiction in the instant appeal as of right, and the answer is, "Yes." (A-1,A-2) (Conceded at bottom of p. 6, Appellee's motion)

24. Defense #19 in each of the two disciplinary proceedings being appealed herein was " Respondent-Attorney herewith reserves the right to raise other defenses, if and when they may come to her attention." (A-2)

25. Such defenses did come to her attention and were raised both in the disciplinary hearings and the day before they were scheduled to begin, by commencing the civil action in the United States District Court for the District of Rhode Island in which claim #1 and claim #2 were federal questions. (A-2 to A-13 herein) Appellee's Appendix B is the caption of the case. (Muka v. Supreme Court of Rhode Island, et al), and Appendix C shows that both the U.S. District Court and the First Circuit Court of Appeals abstained from enforcing the federal question jurisdiction that it had. No appeal was taken from the First Circuit order,

and such abstention is the law of the case. It simply is not true for Appellee to say that the U.S. District Court will rule on Appellant's constitutional challenges in that case, because its abstention is final. The constitutional questions were expressly raised in the Verified Complaint and in the brief on appeal, and were totally ignored, and the merits were totally ignored. Furthermore, additional constitutional issues arose during the disciplinary proceedings and they are not the subject of the case in U.S. District Court commenced before the disciplinary hearings, and these additional issues are only at bar on appeal.

26. The United States Supreme Court cannot "abstain" from deciding the constitutional issues raised on an appeal as of right from the highest state court. This is extremely important at bar, because there is no other review possible, since the R.I. Supreme Court held the only hearing below. (28 U.S.C. 1257(2))

ANSWER # 3 - YES. THIS COURT DOES HAVE JURISDICTION TO REVIEW THE QUESTIONS PRESENTED BY APPELLANT WHICH "DO NOT RAISE FEDERAL ISSUES." (i.e. Fiske v. Kansas)

27. Appellee argues that "Most of the Questions Presented by Appellant raise no federal statutory or federal Constitutional issue, but call only for the construction of the statutory or Constitutional law of the State of Rhode Island." However, the facts of the case show that such Rhode Island Constitution and laws and rules were unconstitutionally applied to Appellant in violation of her federally guaranteed rights, especially her 14th Amendment rights to equal protection of those state constitutional and rule provisions, and rights to constitutional due process under them, and such application to Appellant made them void under federal law. Thus, review by writ of certiorari and by appeal are both proper at bar. Appellee

is incorrect in characterizing these violations as "non-federal" in nature.

28. Appellee only quotes 28 U.S.C. 1257 (1) and (2) to try to show that "non-federal" issues cannot be raised by "appeal." But 28 U.S.C. 1257(3) allows review by certiorari "where any ... right ... is specially set up or claimed under the Constitution ... of the United States," and this, of course, includes Appellant's rights under the 1st and 14th Amendments to the United States Constitution, to freedom of speech and constitutional due process and equal protection of such state laws. Just because a question of state law is raised does not mean that it is "non-federal", because equal protection under the law of the state is a federal issue, not only when it is unconstitutionally applied, but when it is unconstitutional on its face and repugnant to the United States Constitution and/or laws.

29. A statute can be challenged as invalid on its face, or as applied to the Appellant's particular set of facts, or both. The state court's silence in this respect is immaterial and cannot destroy the right to appeal under Sec. 1257(2). Thus, an erroneous failure to pass on the federal constitutional objections to the state statute is treated as equivalent to a finding of validity within the meaning of Sec. 1257(2), so that an appeal will lie. Lawrence v. State Tax Commission, 286 U.S. 276, 282-3 (Miss. 1932).

30. The Order of suspension was completely devoid of any mention of any state or federal law, and thus there is no "adequate state ground" to prevent the constitutional questions from being decided by the United States Supreme Court.

31. Although the Order of suspension made no findings of fact, it did appear to make conclusions of fact, and Appellant

challenges them as being based upon "no evidence" at all. The Supreme Court will review a state court's findings "where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; or where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts." Fiske v. Kansas, 274 U.S. 380, 385-6 (1927). Both exceptions to the general rule appear at bar, and this Court should review the complete record - which is shocking. (See excerpts A-14-A-18)

32. This Honorable Court has felt itself free to make an independent examination of the facts when necessary to decide whether a person has been deprived by a state court of a right secured by the Constitution. Norris v. Alabama, 294 U.S. 587, 590 (1935); Chambers v. Florida, 309 U.S. 227, 228-9

(1940). Thus, an issue of "no evidence" is not a "non-federal" issue when a federal right has been denied under those circumstances, as at bar.

33. In Napue v. Illinois, 360 U.S. 264, 271-2 (1959), the Supreme Court referred to "the long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts or constructions upon which federal constitutional issues rest." Thus, Appellee's argument that such "constructions" are not reviewable by appeal (or by certiorari), has no merit.

ANSWER # 4 - NO. APPELLANT SHOULD NOT HAVE REQUESTED REVIEW OF THE APRIL 19, 1985 ORDER OF THE RHODE ISLAND SUPREME COURT BY CERTIORARI. (i.e. Zauderer case)

34. Appellee's question #4 is irrelevant and has no merit.

35. 28 U.S.C. 2103 provides that an

appeal improvidently taken will be acted on as a petition for writ of certiorari, i.e. as in Slagle v. Ohio, 366 U.S. 259, 264.(1961).

36. Consider the following discussion at p. 73 of Stern v. Gressman, 3rd Ed.:

> "An additional problem arises when a case presents several federal questions, some of which are reviewable by appeal and others only by certiorari. Where the requirements for taking an appeal can be met, there are two alternatives open to the appellant for securing review of the nonappealable issues, as pointed out in Flurnoy v. Wiener, 321 U S. 253, 263. He can include in the questions presented on the appeal "any other denial of federal right whether or not capable in itself of being brought here by appeal," in which event the nonappealable issues will be considered along with the merits of the appealable issues. See Prudential Ins. Co. v. Cheek 259 U.S. 530, 547. ... The first course would be preferable in most cases."

37. In the light of the above discussion and cases, Appellant hereby amends her Jurisdictional Statement to include in addition to the "Questions Presented" the words underlined above, thus mooting question #4.

36. This Honorable Court has recognized its mandatory jurisdiction to review by appeal disciplinary actions taken by state courts against attorneys where the disciplinary rules of conduct, and disciplinary procedures used, under which discipline was imposed were challenged as unconstitutional under the United States Constitution or laws, as at bar.

37. In a case of exactly the same nature as at bar, and just recently decided on May 28, 1985 this Honorable Court decided an appeal (No. 83-2166) entitled Philip Q. Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, (53 LW 4587), in which it made findings of fact that one of the attorney's advertisements was not false or deceptive, and was protected commercial speech under the First Amendment, and reversed that reprimand, and voided a disciplinary rule banning illustrations in advertising, but found that Ohio procedures did not violate due process.

38. But Rhode Island procedures violate due process and this appeal is the only review.

43. This Honorable Court exercised its jurisdiction by granting a writ of certiorari in the case of In Re Robert J. Snyder (No. 84-310 decided June 24, 1985, 53 LW 4833) to review disciplinary action against an attorney for writing a letter to a United States District Court Judge in North Dakota which resulted in his 6 months suspension by the Chief Judge of the Court of Appeals for the Eighth Circuit.

44. This Honorable Court interpreted and construed a disciplinary rule (FRAP 46) and a disciplinary matter and a disciplinary order and a disciplinary suspension, by way of writ of certiorari, reversing the order, finding inter alia that "as officers of the court, members of the bar may appropriately express criticism on such matters" as the administration of a legal program.

45. The case at bar is similar in some respects to In Re Snyder, in that it was appropriate for Appellant to make the statements that she made in a Motion for a New Trial, in her client's behalf, which placed on the record both intrinsic and extrinsic fraud and professional misconduct and judicial misconduct which were proper grounds for a new trial, and furnished the original of such statements to the Rhode Island Commisson on Judicial Tenure and Discipline, both of which it was her duty to do under DR 1-103(A) and (B). The case at bar has additional gigantic substantial federal questions of great and widespread public interest, and the determination of this appeal will have great effect in all states of the United States, since all have similar disciplinary rules, if not procedures, and the right and duty to client and court and the profession should be protected.

CONCLUSION

For the aforesaid reasons, plus hundreds more, Appellant, Betty O. Muka, respectfully requests that the Motion to Dismiss the Appeal from the April 19, 1985 Order of the Rhode Island Supreme Court be denied, and that the Appeal be allowed to be fully briefed and the record below of the proceedings commenced in the first instance in the Rhode Island Supreme Court be considered by this Honorable Court and the many greatly substantial federal constitutional questions under the 1st and 14th Amendments to freedom of speech, constitutional due process, and equal protection of the law, relating to this Appellant attorney and all attorneys in the United States, be carefully decided on the merits, as well as the order of indefinate suspension of Appellant reversed.

Respectfully submitted,
Betty O. Muka, Appellant
113 Kay St., Ithaca, N. Y.
Mrs. Betty O. Muka

(Excerpt from Appellant's "ANSWER, (20) DEFENSES, AND COUNTER-PETITION" to both disciplinary petitions simultaneously prosecuted; some constitutional issues:)

127. The statments made in "Ex. A" were an exercise of the First Amendment right to freedom of speech.

128. Licensed attorneys have such First Amendment rights.

129. Any Disciplinary Rule that imposes a prior restraint upon speech is unconstitutional on its face and as applied, in violation of the First Amendment of the United States Constitution.

130. DR 8-102(B) is unconstitutional, as a prior restraint upon speech.

131. DR 7-106(C)(4) is unconstitutional, as a prior restraint upon speech.

132. Supreme Court Rule 42-7, entitled "Immunity" and stating inter alia that "Members of the Board, Counsel and staff shall be immune from suit for any conduct

in the course of their official duties," is unconstitutional on its face and as applied, in violation of the 14th Amendment guarantee and prohibition against states from denying its citizens the equal protection of the law. (...etc.)

143. Respondent-Attorney herewith reserves the right to raise other defenses, if and when they may come to her attention.

****

(Excerpt from Appellant's Verified Complaint in U.S. District Court raising federal questions related to the disciplinary proceedings, dated November 13, 1984, served, filed and raised during discipline)

9. The Constitution of the State of Rhode Island is unconstitutional under the United States Constitution, particularly the 14th Amendment, because the Rhode Island Constitution does not guarantee constitutional due process of law and equal protection of the law or freedom of speech to citizens and/or inhabitants of Rhode Island.

10. Because of the absence of such guarantees of such fundamental rights, litigants in state law claims and in common law claims and federal claims and in administrative matters, in the Rhode Island courts and administrative bodies, are deprived of such guarantees, and their rights to such federally guaranteed rights are not guaranteed in the State of Rhode Island.

11. The Constitution of the State of Rhode Island is also unconstitutional by reason it has been unconstitutionally applied to this plaintiff, and is also about to be further unconstitutionally applied to this plaintiff.

12. Plaintiff has standing to raise this constitutional issue.

13. The Supreme Court of the State of Rhode Island has issued an order for a proceeding to be had before it on November 14, 1984, commencing at 11 a.m., which proceeding deals substantially and materially

and directly with plaintiff and plaintiff's valuable property rights and plaintiff's business and profession and calling and reputation, etc.

14. In connection with such proceeding, plaintiff has already been deprived of her constitutional rights under the United States Constitution, 14th Amendment, to constitutional due process of law and equal protection of the law, and further deprivation appears to be imminent.

15. The deprivations already suffered at the hands of (80 defendants listed, see Motion to Dismiss, pp A-5) include:

a. malicious administrative prosecution by persons "immune" from civil liability for such,

b. perjured pleadings by persons "immune" from civil liability for such,

c. retalliation for plaintiff's cooperation with Disciplinary Counsel and the Disciplinary Board and Commission on

Judicial Tenure and Discipline by furnishing sworn statements and complaints of professional misconduct and judicial misconduct witnessed by plaintiff and her clients and others,

d. protection and refusal to discipline persons reported by plaintiff and proven to have committed acts well-established to constitute professional misconduct and judicial misconduct,

e. harassment by the number and frequency of false charges and communications requiring timely responses,

f. secreting the names and statements (if any) of any persons complaining against plaintiff,

g. obstructing all discovery (which by unconstitutional rule is discretionary, and without right, as opposed to all other civil and criminal litigants),

h. obstruction of compulsory process to obtain witnesses (which by unconstitutional

rule is discretionary, and without right, as opposed to all other civil and criminal litigants),

i. vague pleadings which lump statements of fact and lump rules violated, and refusal to state them more clearly so that the facts related to each violation are separated from others, which civil litigants have a right to request restated under R.C.P. 12(e)

j. prohibiting all depositions (which by unconstitutional rule is discretionary, and without right, as opposed to all other civil litigants), except allowing the prosecution to do so without restraint & preventing plaintiff from any,

k. terrorization by the Supreme Court completely obstructing all planned and relevant oral argument in plaintiff's 2 cases argued on appeal there on 11/8/84, showing that plaintiff will never be allowed to be heard on 11/14/84, etc.

l. basing complaints on the timely and proper filing of notices of motion and supporting affidavits in lawsuits for clients, which grounds and affidavits were uncontradicted and were adjudicated to prove intrinsic and extrinsic fraud committed by a justice and several lawyers in the Superior Court (Judge Rodgers, lawyers DeSimone, Surdut, Macksoud, Bengtson), yet relief under R.C P. 60 (similar to F.R.C.P. 60) denied, despite proof of the grounds authorized by Rule 60 on the timely motion made to vacate fraudulent orders of dismissal of 2 cases (Guido D'Arezzo vs. Estate of Catherine Christy and Fireman's Fund Insurance Company P.C. 76-904, and Guido D'Arezzo vs. Gerald Christy P.C. 75-3108) dated 1/5/84. ...

m. secret meetings and motions and decisions in the matters against plaintiff, without notice of any motion, without any grounds stated, without any affidavits of facts,

without any basis in law, and with no constitutional due process for notice or any opportunity to defend or object or to raise any issues of fact or law,

n. Disciplinary Counsel's obstruction of complaints against himself, including not having a special prosecutor appointed to prosecute him and not giving his mandatory answer within 20 days,

o. Disciplinary Board members (AGRESTI, CHERNICK, KIERNAN, KILMARX, LAVINE, LYNCH, PALMISCIANO, VACCA) obstruction of complaints against them, including not having a special prosecutor appointed to prosecute them and not giving their mandatory answers within 20 days,

p. suspending all subsections of R.I. Supreme Court Rule 42 (dealing with disciplinary complaints against lawyers, including Disciplinary Counsel and the Disciplinary Board members) so that the processing of disciplinary complaints a-

gainst Disciplinary Counsel and the Disciplinary B ard members is obstructed,

q. suspending and/or abusing all subsections of R.I. Supreme Court Rule 42 in regard to plaintiff, and creating new and different rules which are applicable to this plaintiff only and never have and never will be applicable to any other person, depriving this plaintiff of the equal protection of the law and due process of law.

r. Disciplinary Counsel and Disciplinary Board and the Supreme Court conspiring to and agreeing to suspend all rules for the purpose of retalliating against this plaintiff for performaing her professional duties under DR 1-103(a) and (b) in reporting misconduct of lawyers and judges to the proper authorities and trying to uphold the integrity of the profession, and for the purpose of protecting and promoting and rewarding the wrongdoers who have been reported by plaintiff and for the purpose of severely

and irreversibly injuring this plaintiff to cover up for their own wrong deeds (including crimes)

s. imposing silence regarding all such matters,

t. many other acts and omissions depriving this plaintiff of her federal guaranteed fundamental rights of constitutional due process and equal protection of the law,

u. The Supreme Court proceeding without jurisdiction, etc.

16. Unless a temporary restraining order is issued, followed by a preliminary injunction and perhaps a permanent injunction, the federal rights guaranteed by the United States Constitution will be further violated by the above named defendants (paragraph 15, first part) on November 14, 1984 commencing at 11 a.m., and immediate and irreparable damage to plaintiff, plaintiff's reputation, business, calling, and personal property rights will be or may be

irreversibly damages.

17. There is an immediate and gigantic need for this court to issue a declaratory judgment that the Rhode Island Constitution is unconstitutional under the United States Constitution for failing to guarantee constitutional due process of law and equal protection of the law and freedom of speech, on its face, and as applied to this plaintiff and the disciplinary process.

21. R.I. Supreme Court Rule 42, entitled "Complaints against attorneys" is unconstitutional in a material part, depriving the clearly defined and suspect class of lawyers of their constitutional rights to equal protection of the law and due process of law as guaranteed under the 14th Amendment to the U.S. Constitution, and is being unconstitutionally applied to this plaintiff.

(Paragraphs 22-28 detail the unconstitutional parts of Supreme Court Rule, omitted here)

29. Because the constitutionality of a

statute or rule cannot be challenged unless a person has standing to do so, as plaintiff at bar does have, the rule on confidentiality would seem to endanger a person which standing from making the constitutional challenge which, of course, must be made in public in court. It is eseential that this subsection be ruled to be unconstitutional in this lawsuit as an impermissible prior restraing upon constitutionally protected speech.

30. In regard to the above subsections of Rule 42, there is no rational relation to a legitimate state interest that is served by subjecting the discrete class of lawyers to the deprivation of rights which are constitutionally protected and which are statutory rights for all other classes of persons, i.e. depositions are as of right under R.C.P. 30 without any permission, a trial by jury is a right under R.C.P. 38 and 39 and Rhode Island Constitution,

Article I, Section 15, discovery is as of right under R.C.P 26-37 with provisions for sanctions against anyone obstructing it, there is no rule requiring silence in any other type of matter, criminal or civil, R.C.P. 45 authorizes subpoenas, which can be issued in blank, and subpoena deuces tecums for production of documents - all statutory rights which lawyers in disciplinary proceedings are deprived of unconstitutionally. It serves no legitimate state purpose. Lawyers are very valuable assets to the State, and there is not possible reason they should be deprived of their constitutional and statutory rights in matters affecting their license to practice law. There is absolutely no guarantee that the disciplinary procedures are free from the taints that due process of law and equal protection of the law are designed to remedy and contain.

****

(Excerpts from disciplinary hearing)

p. 1281, lines 7-8 - MRS. MUKA: "I'm trying to disprove the petition."

JUSTICE SHEA: "That's not what's before us."

****

p. 1241-2 - MRS. MUKA: "...paragraph 3 of D.B 247 (one of the disciplinary petitions) is in issue. This is a verified complaint. Mr. Carter has alleged under oath that a complaint has been made to him. I want to know the name of the person who complained to Mr. Carter and the date and I want to see it." MR. CARTER: ... "In this instance, I filed a complaint with myself."

******

p. 1231, lines 15-16 - JUSTICE MURRAY: (to Muka) "... You have put the Disciplinary Committee in the position where they have recused themselves..."

p. 1232-3 - JUSTICE WEISBERGER: (to Carter) "... did you ever present the com-

plaint against Mrs. Muka to the Disciplinary Board? WITNESS CARTER: "Yes."
p. 1256 - WITNESS CARTER: "... A report was written for the Disciplinary Board with a recommendation. The Disciplinary Board reviewed the report and voted that a petition for disciplinary action should issue and we're here now." MRS. MUKA: "What was the date of the Board meeting?" WITNESS CARTER: "I don't recall." MRS. MUKA: "Upon a challenge that it didn't, what would be your answer to that question?" MISS MANAGHAN (Asst. Disciplinary Counsel) "Objection." JUSTICE KELLEHER: "Sustained." MRS. MUKA: "Who were the members of the Disciplinary Board that took (part) in that vote?" WITNESS CARTER: "I don't recall. I would have to look at the minutes."
p. 1336-7 MRS. MUKA: "... Mr. Carter, I have talked with some members of the Disciplinary Board and they have told me that they did not participate in any vote to

discipline me. Now didn't you say that the Board did eventually decide to bring charges against me?" WITNESS CARTER: "No."

****

p. 1299, line 8 - JUSTICE SHEA: "We didn't decide to prosecute."

p. 1304 - MRS. MUKA (to Carter, Disciplinary Counsel): And what investigation did you do in regard to this matter before you charged me?" JUSTICE MURRAY: "He didn't charge you with anything."

p. 1340 - MRS. MUKA "Did you at any time do any investigation, Mr. Carter?" MISS MANAGHAN: "Objection." JUSTICE KELLEHER: "Sustained."

p. 1250- MRS. MUKA: "Mr. Carter has signed a verified complaint against me saying that my statements were false and I want to know from you, Mr. Carter, what information you had that my statements were false." MISS MANAGHAN: "I'm going to object. ... He asserts her statements were false." MRS.

MUKA: "You mean my statements under oath in affidavit form are proof that they are false?" JUSTICE SHEA: They contain a statement. An affidavit could contain such inherently improbable facts ..." JUSTICE MURRAY: "They contain accusations." JUSTICE SHEA: "Accusations only. They are not fact." ... JUSTICE WEISBERGER: ... Mrs. Muka, your statements in support of your motion for new trial are admittedly your statements." MRS. MUKA: "And they were admitted by the opposing party who did not oppose them." JUSTICE WEISBERGER: They are defamatory and therefore, unless you can prove the truth, they would be improper."

p. 1382 - MRS. MUKA: "Are you familiar with the law of torts --" JUSTICE WEISBERGER: "I'm reasonably familiar with the law of torts." MRS. MUKA: "-- where in judicial proceedings you're absolutely privileged to say defamatory statements."

JUSTICE WEISBERGER: "That's not so, Mrs. Muka. That's not so." MRS. MUKA: "You're absolutely privileged if the statements are defamatory and they bear a relationship to the proceeding, they're absolutely privileged." JUSTICE WEISBERGER: "If the material is scurrilous, impertinent and scandalous, it is not privileged." MRS. MUKA: "... the only test is whether or not the statements are relevant to the proceedings in which they are stated." JUSTICE WEISBERGER: "All right, Mrs. Muka, that's part of your final argument." p. 1812 - JUSTICE KELLEHER: "The arguments are over." ... MRS. MUKA: "I thought I was going to be given an opportunity to file a brief on the law." JUSTICE KELLEHER: "No. No. There's no necessity for briefs." MRS. MUKA: "When I tried to give testimony, the Court wouldn't let me say anything about the law, and I was told that I could --" JUSTICE KELLEHER: "Court is adjourned."